CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES FOR THE SPRING PYGMY SUNFISH BETWEEN BELLE MINA FARM, LTD. AND THE U.S. FISH AND WILDLIFE SERVICE

1. Introduction

This Candidate Conservation Agreement with Assurances (CCAA), effective and binding on the date of last signature below, is between Belle Mina Farm Ltd. ("Property Owner") and the U.S. Fish and Wildlife Service ("Service"), collectively referred to as the "Parties". This CCAA has been developed through a collaborative effort between the Parties and a Cooperator, The Land Trust of Huntsville and North Alabama ("Land Trust"), to preserve significant habitat for and to reduce environmental threats to the Spring Pygmy Sunfish (*Elassoma alabamae*) ("Covered Species").

Property Owner: Belle Mina Farm Ltd.
c/o J. Banks Sewell III
Lightfoot, Franklin & White
400 20th Street North
Birmingham, Alabama 35203

Service:
Field Supervisor
c/o Daniel J. Drennen
CCAA Administrator
United States Fish & Wildlife Service
6578 Dogwood View Parkway
Suite A
Jackson, Mississippi 39213

Cooperator: The Land Trust of Huntsville and North Alabama
c/o Executive Director
907 Franklin Street Southeast
Huntsville, AL 35801-4313

Service Tracking Number: TE40219A-0

2. Enrolled Land

For purposes of this CCAA, the "Enrolled Land" includes approximately 3200 acres, and all waters therein, located in Limestone County, Alabama and owned by the Property Owner. The Enrolled Land is depicted in Appendix A and described in Appendix B, both attached hereto.

3. Duration of the CCAA and Enhancement of Survival Permit

The duration of this CCAA and the associated Enhancement of Survival Permit ("ESP," "Permit" or "permit") shall run concurrently for a period of twenty (20) years except as otherwise provided in Sections 7, 14, 15, and 16.11, below. Notwithstanding the date on which the Permit is issued, the Permit shall become effective for the Covered Species on the effective date of a final rule that lists the Covered Species as an "endangered" or "threatened" species under the ESA. The duration of this CCAA may be extended and the Permit renewed in accordance with Section 16.10, below.

4. <u>Authority and Purpose</u>

Sections 2, 7, and 10 of the Endangered Species Act of 1973, as amended, [16 U.S.C. Section 1531, *et seq.*] ("ESA" or the "Act") and the Fish and Wildlife Coordination Act [16 U.S.C. Sections 661-666(c)] allow the Service to enter into this CCAA. Section 2 of the Act states that encouraging interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is essential to safeguarding the Nation's heritage in fish, wildlife, and plants. Section 7 of the Act requires the Service to review programs that it administers and to utilize such programs in furtherance of the purposes of the Act. By entering into this CCAA, the Service is utilizing its Candidate Conservation Program to further its mission of conservation. Section 10(a)(l)(A) of the Act authorizes the Service to issue permits to "enhance the survival" of proposed and candidate species as well as those species that may become candidates in the future. This CCAA also is entered into pursuant to the Service's final CCAA policy [64 *Federal Register* 32726] ("CCAA Policy") and the Service's implementing regulations at 50 C.F.R. §§ 17.22(d) and 17.32(d).

The purpose of this CCAA is to provide for the implementation of conservation measures for the Covered Species on the Enrolled Land. Under the terms specified herein, the Property Owner will preserve and protect the Covered Species' habitat and create a "protected area" that the Parties agree will reduce and/or limit the threats to and promote the survival of the species. By entering into this CCAA, the Service has determined that implementation of the conservation measures set forth herein and the expected benefits of such measures, when combined with benefits that would be achieved were it assumed that similar measures were also to be implemented on other necessary properties, would preclude or remove the need to list the Covered Species as endangered or threatened under the ESA. Specifically, the Service has determined that implementation of the conservation measures set forth in Section 6(A), below, will reduce threats and impacts to the Covered Species and its habitat on the Enrolled Land.

It also is expected that implementation of this CCAA and the conservation measures that are to occur within the currently unknown, but suspected, recharge area will protect the groundwater/springs systems on the Enrolled Land. An additional purpose of this CCAA is to provide assurances to the Property Owner that the Service will not require additional conservation measures beyond those agreed to herein should the Service list the Covered Species under the ESA where the CCAA is being properly implemented. Moreover, should the Service list the Covered Species during the time this CCAA is in effect, the Property Owner will be authorized through the associated Enhancement of Survival Permit to engage in incidental take of the Covered Species to the extent authorized herein and in the permit.

5. Background and Description of Existing Conditions

Since the discovery of the Covered Species in 1937, the conservation of the species has been of concern to biologists, including the Service, and the landowners whose properties contain the species. The species is highly localized within the eastern Highland Rim of the Tennessee River Drainage, Limestone County, Alabama. The Highland Rim is a unique geological and ecological region that supports unique aquatic habitats and organisms. The Covered Species historically occupied three small distinct spring complexes (Cave, Pryor, and Beaverdam Springs). Two of the three native populations of the species are believed to be extirpated. The remaining known population occupies about five (5) river miles of the Beaverdam-Moss Creek/ Spring Complex within Limestone County, Alabama. The Covered Species prefers patches of dense, filamentous submergent vegetation for foraging, refuge from predators, and spawning. Without stable aquatic environments offered by spring pools and spring runs, vegetation changes would occur that would not benefit the Covered Species.

The Covered Species inhabits the Enrolled Land, which has longstanding agricultural usage including cattle and irrigated cropland operations. Since 1983, the Property Owner has been successful in cooperating with the Service in conserving and maintaining the integrity of species' habitat in the Beaverdam-Moss Spring Complex. The Property Owner has created and maintained a buffer zone around the Moss Spring Pond population of the Covered Species and managed cattle consistent with current grazing research and the species' ecology. However, studies of the Covered Species' natural history and additional range locations are on-going. Through this CCAA, the Property Owner will continue to implement the existing conservation efforts on the Enrolled Property as well as long term strategies to protect the Covered Species and its habitat.

6. Conservation Measures and Parties' Commitments:

A. During the term of this CCAA, Property Owner agrees to the following:

1. To maintain a buffer zone of up to 150 feet, vegetated with habitat specific native plants, around the Moss Spring Pond (See Appendix C, attached hereto). No barren or cultivated ground will be used as a buffer. The buffer zone will extend from the North, West and South sides of the existing waterline. The East side of Moss Spring Pond abuts a public roadway and, therefore, will not be subject to the buffer zone. The dimensions of the buffer zone will be calculated using NRCS Riparian Forest Buffer Code 391, Zone 1 and Zone 2 (attached hereto as Appendix D). However, to maximize the benefit of the buffer zone to the Covered Species' habitat, the 391minimum buffer for Zone 1 and Zone 2, combined, will be expanded to extend not less than 100 feet from the existing waterline, unless new information indicates otherwise and Property Owner agrees to adopt a different buffer. However, the required maximum buffer zone will not be more than 150 feet from the existing waterline. The buffer zone will be calculated using existing slope and vegetation. Property Owner will not be required to alter slope or install or maintain additional vegetation. The Parties may opt to make changes to vegetation at any time to reduce

the dimensions of the required buffer zone calculated by the procedure set forth in NRCS Code 391, as may be revised, subject to the 100 foot minimum and 150 foot maximum. The dimensions of the buffer zone are to be measured in true horizontal distance.

2. To prohibit cattle access to Moss Spring Pond and the vegetated buffer zone described in Section 6(A)(1), above.

3. To prohibit cattle access to the "Protected Area," as defined in the following paragraph 4 and depicted in Appendix E, that is owned or controlled by Property Owner.

4. To create a "Protected Area" of approximately 150 acres of known Covered Species' habitat within Property Owner's Beaverdam Swamp/Creek holdings. The approximate contour of the Protected Area is shown in Appendix E, attached hereto. The Protected Area will run from the Beaverdam spring head at the north to Property Owner's southern boundary on the east side of Greenbrier/Powell Road within Beaverdam Spring/Swamp. The Protected Area will encompass a portion of "Lowe Ditch" beginning at its eastern junction with Beaverdam Spring and ending 500 feet east of the western terminus of Lowe Ditch. Areas within the Protected Area will contain a minimum 100 foot buffer zone and/or maximum 150 foot buffer zone extending from the edge of the existing waterline within Beaverdam Spring/Swamp. The dimensions of the buffer zone shall be calculated and applied using NRCS Code 391, as may be revised, in the manner set forth in Section 6(A)(1), above.

The Parties agree that the Protected Area, including its buffer zones as described above, will be surveyed and that the CCAA will be amended, in accordance with Section 12, below, to append a copy of the survey to the CCAA. If within ninety (90) days of completion of the survey, the Service determines and establishes by clearly documented and reliable scientific data that an additional buffer is necessary to assure the integrity of the spring head located in the Northeast corner of the Protected Area, the Parties agree to amend the CCAA to reflect the increase in the size of the Protected Area and the buffer zone at said "spring head" to a maximum of 200 horizontal feet from the existing waterline of the spring head.

The Property Owner agrees it will not engage in deforestation, land clearing, industrial development, residential development, aquaculture, temporary or permanent ground water removal installations, stocked farm ponds, pesticide and herbicide use, and impervious surface installation within the Protected Area (excepting public road, utility, public works projects and facilities subject to condemnation or eminent domain) without prior consultation with the Service and the Service's written agreement. The Property Owner may engage in footpath construction, subject to appropriate erosion control, and dam or other water obstruction removal within the Protected Area provided the same does not diminish the hydrology as it exists on the effective date of this CCAA or the benefits of the

conservation measures set forth herein. The restrictions contained in this paragraph apply only to the Protected Area.

5. To permit the Service and the Land Trust, including their employees, agents and designees as well as persons identified in Sections 11(B)(2) and (3), below, access to Moss Spring Pond and the Protected Area for the purposes of biological monitoring of the Covered Species, habitat monitoring and compliance with this CCAA, provided reasonable notice is given to the Property Owner.

6. To comply with this CCAA and the associated ESP.

(B) The Service agrees to the following:

1. Provided the required criteria are met, to issue an Enhancement of Survival Permit to Property Owner for a term concurrent with the term of this CCAA that, upon its effective date, will provide Property Owner authorization to engage in incidental take of the Covered Species consistent with this CCAA and the terms and conditions of the permit and, except as otherwise provided in Section 16.11, below, to provide the regulatory assurances set forth in Section 9, below, to the Property Owner.

2. To provide technical assistance or management advice, including groundwater management advice, to Property Owner and The Land Trust, upon request or as needed, subject to Section 16.3, below.

(C) The Land Trust agrees to the following:

1. To be responsible for all reporting required by Section 11(A), below.

2. To propose changes to the monitoring and/or reporting requirements when it believes such changes are necessary for adaptive management.

3. To ensure that annual habitat analyses and select site samplings are performed as specified in Sections 11(B)(2) and (3), below.

4. To provide funding for part or all of the said monitoring activities.

7. <u>Adaptive Management</u>

If new information or empirical data becomes available, the conservation measures outlined in Section 6, above, may be modified by mutual agreement of the Parties to include adaptive management measures to achieve greater conservation for the Covered Species. The primary purpose of adaptive management is to examine alternate strategies for meeting the goals and objectives of the CCAA through research, evaluation, and/or monitoring. Either Party may propose the implementation of adaptive measures to better meet the conservation needs of the

Covered Species. The Land Trust may propose and shall be a party to any agreement regarding the implementation of adaptive management measures pertaining to monitoring or reporting. The Service may, among other things, propose altering the term and duration of the CCAA as more information is discovered concerning the Covered Species or if environmental or natural history conditions of the species decline to the point where additional conservation measures may be needed to conserve and maintain growth of the population. If data from two known population samples as outlined in Section 11(B)(4), below, show that there is a decrease of the population of the Covered Species, the Service may propose additional water use management practices within the Enrolled Land to maintain the status quo of historical water usage within the Protected Area. Adaptive management measures will become effective upon the written agreement of the Parties provided, however, that the Land Trust also must agree in writing to any measures pertaining to monitoring and reporting on the natural history of the Covered Species, groundwater usage within the Enrolled Land, including pumping from the aquifer, and changes in the Covered Species' habitat.

8. <u>Succession and/or Transfer</u>

Pursuant to 50 C.F.R. §§ 13.24, 13.25, 17.22 (d)(3)(i) and 17.32 (d)(3)(i), this CCAA shall be binding on and shall inure to the benefit of the Property Owner and its respective successors and transferees (collectively referred to "transferee" or "transferees") including, but not limited to, subsequent owners of the Enrolled Land or any portion thereof. The rights and obligations of this CCAA shall run with the ownership of the Enrolled Land. Should Property Owner contract to sell, transfer or gift any or all of the Enrolled Land, it agrees to notify the Service and the Lands Trust at least thirty (30) days in advance of any such sale, transfer or gift. The Property Owner also agrees to inform the transferee at least thirty (30) days in advance of sale, transfer or gifting that the Enrolled Land is subject to this CCAA and the associated ESP. The Enhancement of Survival Permit issued to the Property Owner may be transferred to non-federal transferees in accordance with 50 C.F.R. Part 13, including, but not limited to, § 13.25 and §§ 17.22 (d)(3)(i) and 17.32 (d)(3)(i), which require, among other things, that the transferee agree in writing to become a party to this CCAA and the ESP. Upon becoming a party to this CCAA and holder of the associated ESP, the transferee shall have the same rights and obligations with respect to the Enrolled Land or portion thereof as the original Property Owner. The transferee also may choose to enter into a new CCAA with the Service and receive a new permit provided the Service determines the transferee is qualified under the Service's CCAA Policy and 50 C.F.R. Parts 13 and 17. If the transferee chooses not to become a party to this CCAA or a new CCAA and the holder of the Permit or a new enhancement of survival permit, the transferee shall not receive any of the benefits and assurances of this CCAA and the associated ESP.

Property Owner will continue to be bound by this CCAA and holder of the ESP and, subject to Section 16.11, below, shall retain the regulatory assurances as to any portion or portions of the Enrolled Land as to which Property Owner retains ownership.

9. <u>Assurances</u>

<u>Prior to the Effective Date of the ESP</u>

Except as provided in Section 16.11, below, in accordance with the Service's CCAA Policy, and only with respect to the Covered Species, the Service provides assurances that no additional conservation measures or additional land, water or resource restrictions beyond those voluntarily agreed to and described in this CCAA will be required on Enrolled Land.

As of the Effective Date of the ESP

Except as provided in Section 16.11, below, if this CCAA is being properly implemented, in accordance with 50 C.F.R.§§ 17.22 (d)(5) and 17.32 (d)(5), the Service provides the following assurances to the Property Owner with respect to the Covered Species in the case of "Changed Circumstances" or "Unforeseen Circumstances":

A. Changed Circumstances

"Changed Circumstances" are changes in circumstances affecting the Covered Species or Enrolled Land that can reasonably be anticipated by the Parties and planned for. [See 50 C.F.R. § 17.3] If the Service determines that additional conservation measures are necessary to respond to Changed Circumstances and the measures are set forth in this CCAA, the Property Owner shall implement the agreed upon measures to address such circumstances. If, on the other hand, the Service determines that additional conservation measures not provided for herein are necessary to respond to Changed Circumstances, the Service will not require any conservation measures in addition to those provided for herein without the consent of the Property Owner. [See also 50 C.F.R. §§ 17.22(d)(5)(i)-(ii) and 17.32(d)(5)(i)-(ii)]

B. Unforeseen Circumstances

"Unforeseen Circumstances" are changes in circumstances affecting the Covered Species or Enrolled Land that could not reasonably have been anticipated by the Parties at the time of the negotiation and development of this CCAA and that result in a substantial and adverse change in the status of the Covered Species. [See 50 C.F.R. § 17.3] In negotiating Unforeseen Circumstances, the Service will not require the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources beyond the level otherwise agreed upon for the Covered Species without the consent of the Property Owner.

1. If the Service determines that additional conservation measures are necessary to respond to Unforeseen Circumstances and such measures are not contemplated through the Adaptive Management component of this CCAA or otherwise addressed herein, the Service may require additional measures of the Property Owner only if such measures maintain the original terms of this CCAA to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources

otherwise available for development or use under the original terms of this CCAA without the consent of the Property Owner.

2. The Service will have the burden of demonstrating that Unforeseen Circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the Covered Species. The Service will consider, but not be limited to, the following factors:

   (a) Size of the current range of the Covered Species;
   (b) Percentage of the Covered Species' range that is adversely affected by the CCAA;
   (c) Percentage of the Covered Species' range that is conserved by the CCAA;
   (d) Ecological significance of that portion of the Covered Species' range affected by the CCAA;
   (e) Level of knowledge about the Covered Species and the degree of specificity of the species' conservation program under the CCAA; and
   (d) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the Covered Species in the wild.

C. Additional Actions

Nothing in this section shall be construed to limit the Service or the Property Owner from taking additional actions at their own expense to protect or conserve the Covered Species provided such actions are consistent with the conservation measures and conservation goals described in this CCAA. Upon request, the Service will provide technical advice, to the maximum extent practicable and subject to Section 16.3, below, to the Property Owner. Written agreement of the Parties is required prior to the Service engaging in any such additional actions within the Enrolled Land except in the event of emergency or as may be required under Section 15. Where written agreement is required, however, the Property Owner agrees that it shall not unreasonably withhold such agreement.

10. Incidental Take of Covered Species

From the effective date of the ESP, when appropriate, Property Owner shall give the Service reasonable advance notice, i.e., at least thirty (30) days, of when it expects to incidentally take the Covered Species under the ESP. Such notice will provide the Service with an opportunity to relocate affected individuals of the Covered Species, if possible and appropriate. The ESP will specify the level and amount of take of the Covered Species that is authorized by the Service in the ESP.

11. Reporting and Monitoring

A. Reporting

The Land Trust will be responsible for all reporting required by this CCAA including, implementation of conservation measures, monitoring of the Covered Species and its habitat, and occurrences of incidental take in accordance with the associated Permit. Reports will be due to the Service by no later than January 30 annually.

B. Monitoring

Monitoring activities will consist of the following:

1. When either Party to this CCAA reports the presence of a member of the Covered Species on the Enrolled Land, upon reasonable notice to the Property Owner, the Service may come onto the Enrolled Land to engage in activities to assess the status, abundance, or other determined natural history or ecological parameters of the Covered Species.

2. Annual Habitat Analysis: The Land Trust will assure that a Habitat Analysis is conducted within the Protected Area at least once each year in the spring and/or summer for the duration of the CCAA. The Habitat Analysis will consist of (a) documenting and generally mapping the cover types and the persistence of plant life most strongly associated with the Covered Species including, but not limited to, spineless hornwort, two-leaf water milfoil and Elodea; (b) documenting the presence of plant life believed to be detrimental to the Covered Species including, but not limited to, cattail, filamentous algae and parrot feather; (c) correlating habitat and habitat utilization with water level of the Moss Spring and Beaverdam Spring system; and (d) documenting any other factors within the Protected Area pertinent to the recovery of the Covered Species. A water level measuring device will be installed within the spring pool in a site determined by Service biologists with Property Owner's agreement, which shall not be unreasonably withheld. The device will be maintained by the Service. Persons conducting the Habitat Analysis shall be selected by the Executive Director of the Land Trust, subject to the Service's approval. Persons conducting the Habitat Analysis must have received appropriate training and experience to engage in the activities required of this paragraph. Such persons also must have the necessary federal and state permits to engage in such activities, if such are required. During the selection process, the Executive Director of the Land Trust and the Service agree to consider any objections the Property Owner might have to particular persons.

3. Select Site Sampling: The Land Trust will ensure that the select sites within the Enrolled Land, described below, are sampled once every year for the first- three (3) years of the CCAA, then every third year, to monitor the Covered Species' relative population and/or habitat trends. The results of this sampling will allow the Parties to ascertain the success of implementation of the conservation measures. The sampling

sites will be selected by the Service based on the scientific literature as well as reports concerning collection sites within the Enrolled Land for the five (5) years predating the effective date of this CCAA. The relative abundance of the Covered Species will be calculated using "catch per unit" to maximize efficiency of sampling and to avoid undue stress to the Covered Species, and to correlate with habitat utilization and water levels of the Moss Spring and Beaverdam Spring system; additional ecological and/or natural history parameters of the surveyed population may be included, if agreed on between the Parties and the Land Trust. Persons who engage in such sampling will be selected by the Executive Director of the Land Trust, subject to the Service's approval. Persons who engage in such sampling must be either qualified biologists or persons who are deemed by the Service or the State of Alabama to have the appropriate training and experience or have been recommended by the Service or the State of Alabama. During the selection process, the Executive Director of the Land Trust and the Service agree to consider any objections the Property Owner might have to particular persons. It is further provided that any person performing such sampling shall have the necessary federal and state permits to engage in such activities.

4. Additional Population Sampling: The Service may sample all known Covered Species' populations and areas of probable new populations within the Enrolled Land once every five years for the duration of this CCAA. Sampling may occur during both probable pre- and post-spawn periods to assess the species' population and/or habitat trends and will include, if agreed on by the Parties and the Land Trust, additional ecological and/or natural history parameters of the surveyed population such as correlating habitat and habitat utilization of the Covered Species with water level of the Moss Spring and Beaverdam Spring system. The results of this sampling will allow the Parties to ascertain the success of implementation of the conservation measures. The relative abundance of the Covered Species will be calculated using "catch per unit" to maximize the efficiency of the sampling and to avoid undue stress to the species. Any sampling undertaken by the Service is subject to its having available and authorized funding. If funding is not available or authorized in a given year, the Service may postpone its five year sample until such time as funding is available and authorized. The Service may be granted additional access to areas of known Covered Species population to study the ecology of the species if there is a decrease in the population based on two known population samples.

Upon providing reasonable notice to the Property Owner, the Service may assist in monitoring, evaluating, modeling, assessing and assisting with the activities set forth in paragraphs 2 and 3 of this section.

12. <u>Modifications and Amendments of the CCAA</u>

Either Party may propose modifications or amendments to this CCAA by providing written notice to, and obtaining the written concurrence of, the other Party. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. Proposed modifications related to monitoring or reporting shall also require written notice to, and the

written concurrence of, the Land Trust. The Parties will use their best efforts to respond to a proposed modification or amendment within thirty (30) days of receipt of such; however, where the Service proposes a modification or amendment based on a belief that there is a decline in the number and population of the Covered Species and/or that perceived threats may impact the recovery of the species, the Property Owner agrees to review and respond to such proposal within twenty-four (24) hours. A proposed modification or amendment of the CCAA will become effective upon the other Party's written concurrence or, when applicable, upon the written concurrence of the Land Trust.

13. Amendment of the Permit

The permit may be amended in writing pursuant to 50 C.F.R. § 13.23.

14. Termination of the CCAA by Property Owner

Pursuant to Part 8 of the Service's CCAA Policy, the Property Owner, with good cause, may terminate the CCAA prior to its expiration date, even if the expected benefits and terms and conditions of the CCAA have not been realized. The ESP also would be terminated at the same time as the CCAA. The Property Owner is required to give the Service and the Land Trust ninety (90) days prior written notice of its intent to terminate the CCAA and to provide the Service the opportunity to relocate the Covered Species, if the Service chooses, prior to termination of the CCAA.

15. Revocation and Suspension of the Permit

The Service may suspend the ESP in accordance with 50 C.F.R. § 13.27. The Service may revoke the ESP for any reason set forth in 50 C.F.R. § 13.28(a)(1)-(4). The Service also may revoke the ESP if continuation of the permitted activity would either appreciably reduce the likelihood of the survival and recovery in the wild of any federally-listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking the ESP for either of the last two reasons, the Service, with the consent of the Property Owner, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: (1) extending or modifying the existing permit; (2) capturing or relocating the species; (3) compensating the Property Owner to forgo the activity; (3) purchasing an easement or fee simple interest in the Enrolled Land; or (4) arranging for a third-party acquisition of an interest in the Enrolled Land. [See also 50 C.F.R. §§ 13.49, 17.22(d)(7), and 17.32(d)(7)]

16. General Provisions

16.1. Remedies

Each Party shall have all remedies otherwise available to enforce the terms of this CCAA and the Permit.

16.2. Dispute Resolution

The Parties agree to work together in good faith to resolve any disputes that may arise from this CCAA. The Parties may engage in dispute resolution procedures agreed upon by the Parties subject to Section 16.3, below.

16.3. Availability of Funds

The Service's implementation of this CCAA is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this CCAA shall be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required to expend any available and appropriated funds unless and until an authorized official of the Service affirmatively acts to commit to such expenditures as evidenced in writing.

16.4. No Third-Party Beneficiaries

This CCAA does not create any new right or interest in any member of the public as a third-party beneficiary nor does it authorize anyone not a party to this CCAA to maintain a suit for injuries or damages pursuant to the provisions of this CCAA. The duties, obligations, and responsibilities of the Parties to this CCAA with respect to third parties shall remain as imposed under existing law.

16.5. Notices and Reports

Any notices and reports, including monitoring and annual reports, required by this CCAA shall be delivered to the persons listed below, as appropriate:

Property Owner:
Belle Mina Farm Ltd.
c/o J. Banks Sewell III
Lightfoot, Franklin & White
400 20th Street North
Birmingham, Alabama 35203

The Service:
Field Supervisor
c/o Daniel J. Drennen, CCAA Administrator
United States Fish & Wildlife Service
6578 Dogwood View Parkway
Suite A
Jackson, Mississippi 39213

The Land Trust:
The Land Trust of Huntsville and North Alabama
c/o Executive Director
907 Franklin Street Southeast

Huntsville, Alabama 35801-4313

16.6. Access to Enrolled Land

In accordance with 50 C.F.R. §§ 13.21(e)(2) and 13.47, the Property Owner consents to and shall allow the Service to access areas of Covered Species habitat within the Enrolled Land, including but not limited to, the Protected Area, at any reasonable hour.

16.7. Successors and Assigns

Subject to Section 8, above, this CCAA and each of its covenants and conditions shall be binding on and accrue to the benefit of the Parties and their respective successors. The term "Service" shall include its employees, personnel and agents.

16.8. References to Regulations

Except where otherwise expressly provided herein, any reference in this CCAA to any Service implementing regulation also shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

16.9. No Guarantee regarding Listing

The Parties agree and acknowledge that this CCAA is not a guarantee that the Covered Species will not be listed as "threatened" or "endangered" under the ESA in the future.

16.10 Extension of CCAA and Enhancement of Survival Permit

Subject to 50 C.F.R. § 13.22 and Sections 7, 13, 14, 15, and 16.11, herein, the duration of this CCAA may be extended and the Enhancement of Survival Permit renewed, with or without modification, prior to the expiration date listed on the permit with the written approval of the Parties. The Service's approval of any such extension or renewal may be conditioned on, among other things, the Property Owner's agreement to incorporate and implement modifications to the provisions of the CCAA, including, but not limited to, the conservation measures, based on new and/or pertinent information concerning the Covered Species and its habitat.

16.11 Reevaluation of Status of the Covered Species

If at any time during the duration of this CCAA and Permit, the Service determines that there has been a 15% decline in the status of the Covered Species, using the best scientific and commercial data available, the Parties agree to re-evaluate the conservation measures set forth in Section 6, above. If such re-evaluation reflects a need to change the conservation measures, the Property Owner agrees either to implement such new or additional measures notwithstanding the assurances set forth in Section 9, above, or to terminate this CCAA and surrender the Permit subject to Section 15, above.

Each Party and The Land Trust warrants that respective signatory is authorized to execute this CCAA on its behalf.

Belle Mina Farm Ltd.:

By: J. Banks Seaver III (print)

Its: Managing General Partner

Signature: J. Banks Seaver

Dated: 6/7/12

U.S. Fish and Wildlife Service:

By: Cary Nerquist (print)

Its: Acting Field Supervisor

Signature: Cary Nerquist

Dated: 6/7/12

The Land Trust:

By: Cynthia Pitts (print)

Its: Executive Director

Signature: Cynthia Pitts

Dated: 6/6/2012

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

2. AUTHORITY-STATUTES
16 USC 1539(a)
16 USC 1533(d)

REGULATIONS
50 CFR 17.22
50 CFR 17.32

50 CFR 13

1. PERMITTEE

BELLE MINA FARM LTD.
6185 MOORESVILLE ROAD
BELLE MINA, AL 35615
U.S.A.

3. NUMBER
TE40219A-0

4. RENEWABLE
☒ YES
☐ NO

5. MAY COPY
☒ YES
☐ NO

6. EFFECTIVE
06/07/2012

7. EXPIRES
06/30/2032

8. NAME AND TITLE OF PRINCIPAL OFFICER *(If #1 is a business)*
JOHN BANKS SEWELL, III
PRESIDENT

9. TYPE OF PERMIT
NATIVE ENDANGERED & THREATENED SP. CANDIDATE CONSERVATION - E & T WILDLIFE

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

Enrolled Land: Belle Mina Farm Ltd. approximately 3200 acres, Limestone County, Alabama.

11. CONDITIONS AND AUTHORIZATIONS

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

Also valid for use by permittee's authorized agents and the cooperator, The Land Trust of Huntsville and North Alabama.

D.Acceptance of this permit serves as evidence that the permittee and its authorized agents understand and agree to abide by the terms of this permit and all sections of title 50 code of federal regulations, parts 13 and 17, pertinent to issued permits. Section 11 of the endangered species act of 1973, as amended, provides for civil and criminal penalties for failure to comply with permit conditions.

BLOCK 11 OF THIS PERMIT CONSISTS OF CONDITIONS A - N (4 PAGES TOTAL).

☒ ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

Reports will be provided to the U.S. Fish and Wildlife Service offices appearing in Condition M of this Permit.

ISSUED BY	TITLE	DATE
Cary Norquist for	Field Supervisor, Mississippi Ecological Services Office, Jackson, Mississippi	06/07/2012

BELLE MINA FARM LTD.
6185 MOORESVILLE ROAD
BELLE MINA, ALABAMA 35615
PHONE NUMBER: 205-581-0760
TE40219A-0

E. The Permit Area (Enrolled Land) consists of approximately 3,200 acres in Limestone County, Alabama. The Enrolled Land includes a buffer zone around Moss Spring Pond, and a Protected Area of approximately 150 acres within the Property Owner's Beaverdam Swamp/Creek holdings. Locations and descriptions of the Enrolled Land can be found in Appendix A, B, C, D and E of the document entitled "Candidate Conservation Agreement with Assurances for the Spring Pygmy Sunfish Between Belle Mina Farm, LTD. and the U.S. Fish and Wildlife Service" (CCAA). The Enrolled Land is owned by Mr. John Banks Sewell III, President, Belle Mina Farm, Ltd.

F. This Permit's continued validity is contingent upon the full and complete compliance of the Permittee and Cooperator, any authorized agents with the terms and conditions established herein and in the CCAA. This CCAA and any future modifications and amendments are incorporated into this Permit.

G. The authorizations granted by this Permit become effective and valid for the covered species (*Elassoma alabamae)* upon being listed as threatened or endangered under the Endangered Species Act of 1973, as amended, through the date on which this Permit expires or is otherwise terminated.

H. This Permit provides authority for any incidental take of *Elassoma alabamae* resulting from land uses conducted in accordance with the conservation measures as outlined in section 6 (A) of the CCAA. In addition to the incidental take authority vested herein, subject to the performance of the CCAA, the Permittee shall have the regulatory assurances for this incidental take as outlined in sections 9 and 10 of the CCAA.

I. The Permittee and the U.S. Fish and Wildlife Service agree that termination, modification, and/or amendments to the CCAA and/or this Permit may occur through the effective term of the Permit. The Permittee and the U.S. Fish and Wildlife Service shall use the procedures outlined in sections 12 – 14 of the CCAA.

J. Neither this Permit nor the CCAA authorizes incidental take of any other federally listed plant and/or animal species. In the event other federally listed plant and/or animal species are found to occur in the Permit Area and are found to be adversely affected by the Permittee's activities and actions associated with implementation of this Permit and the CCAA, the Permittee agrees to meet with the U.S. Fish and Wildlife Service and to develop appropriate management measures to preclude the potential for unauthorized taking of such species.

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K. The Cooperator, The Land Trust of Huntsville and Northern Alabama, will provide annual monitoring reports as specified in section 6 (C) and section 11 of the CCAA. The Cooperator will be responsible for acquiring any state and other federal authorization to fulfill these obligations.

L. Upon locating a dead, injured or sick member of the covered species in the course of administering this Permit and the CCAA, initial notification must be made immediately to the U.S. Fish and Wildlife Service, Law Enforcement Office, 6578 Dogwood View Parkway, Suite B, Jackson, Mississippi 39213 Phone: 601-965-4699, Fax 601-965-5693. If authorized, care should be taken in handling sick, injured, or dead specimens to ensure effective treatment or to preserve biological materials for later analysis. In conjunction with the care of sick or injured endangered/threatened species or preservation of biological materials from a dead animal, the finder should take responsible steps to ensure that the site is not unnecessarily disturbed.

M. Beginning in 2013, and continuing for the durations of this Permit and CCAA, the Cooperator will submit a report to the Field Supervisor, Mississippi Field Office, U.S. Fish and Wildlife Service Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. The format and content of the reporting shall follow the Reporting and Monitoring activities stated in section 11. A and B of the CCAA. Additionally, each report shall contain the following:

A certification from a responsible official who supervised or directed the preparation of the report:

"Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete."

N. The U.S. Fish and Wildlife Service agrees to use its best efforts to maintain the confidentiality of any information or data submitted by or on behalf of the Permittee in the annual report required in Section 11. A of the CCAA. In addition, the U.S. Fish and Wildlife Service agrees to use its best efforts to maintain the confidentiality of any information or data submitted by or on behalf of the Permittees pursuant to this Permit which the Permittees have designated as proprietary, commercially or financially sensitive, or confidential, to the maximum extent allowed under law. The U.S. Fish and Wildlife Service shall provide written notice to the Permittees upon receiving a request by any other agency or party for such information or data or a record containing such information or data. In the event that the U.S. Fish and Wildlife Service determines that it may be required to disclose the information or data to the

requesting agency or other party, it shall provide to the other Permittees written notice prior to the anticipated date of disclosure, to allow the other Permittees to object and/or take appropriate action to seek to prevent the disclosure of such information or date or to assure that the requesting party will likewise maintain the confidentiality of the information or data with respect to further disclosure.

END