

Recorded in Cass County, Missouri



Recording Date/Time: 12/28/2017 at 03:53:23 PM  
Book: 4205 Page: 70

Instr #: 618921

Type: COV

Pages: 25

Fee: \$96.00 S 20170017183



Mike Medsker  
Recorder of Deeds

(Space above reserved for Recorder of Deeds certification)

Title of Document: *Covenant and Service Agreement*

Date of Document: *12-22-2017*

Grantor(s): *Scott and Vicki Westlake*

Grantee(s):

Mailing Address: *21301 Shelby Lane, Belton, MO 64012*

Reference Book and Page:

Legal Description:

*SEE LAST PAGE*

If there is not sufficient space on this page for the information required, state the page reference where it is contained within the document

**Statutory Recorders Fees First Page of Each Document**

Homeless Fee - State	
User Fee - State	\$3.00
State Statutory Pool	\$2.00
County Employee Retirement Fund	\$2.00
Record Reservation- Recorder	\$7.00
Technology Fund-Recorder	\$2.00
General Revenue- County	\$1.25
	\$6.75
TOTAL FIRST PAGE FEE	
Each additional page	\$24.00
	\$3.00

Mike Medsker  
Recorder of Deeds  
Cass County Courthouse  
102 E Wall St  
Harrisonville, Missouri 64701  
1-816-380-8118  
[mikem@casscounty.com](mailto:mikem@casscounty.com)

**COVENANT AND SERVICE AGREEMENT**  
**between**  
**SCOTT AND VICKI WESTLAKE**  
**and**  
**MIDWEST MITIGATION OVERSIGHT ASSOCIATION, INC.**

**THIS COVENANT AND SERVICE AGREEMENT** (this "Agreement") is made and entered into as of the date all parties hereto have executed the same, by and between **SCOTT WESTLAKE** and **VICKI WESTLAKE**, who can be contacted care of Jeffrey A. White, Managing Partner, Quantum Financial Partners, 11020 Oakmont, Suite 100, Overland Park, Kansas 66210 (collectively, "Owner") and **MIDWEST MITIGATION OVERSIGHT ASSOCIATION, INC.**, a Missouri not-for-profit corporation, having a notice address of 21301 Shelby Lane, Belton, Missouri 64012 ("MMOA").

**RECITALS:**

A. Owner is the record owner of that certain real property situated in Cass County, Missouri, described on **Exhibit "A"** attached hereto and by reference made a part hereof (the "Property"). That portion of the Property described on **Exhibit "B"**, attached hereto and by reference made a part hereof, is the subject of an agreement (the "Mitigation Plan Instruments") with the US Army Corps of Engineers creating compensatory mitigation for Permit Number NWK-2007-268 (the "Protected Property").

B. Pursuant to that certain conservation easement, dated as of May 10, 2017, and recorded on 12-28-2017 in the real property records of Cass County, Missouri at Book 4205, Page 69, by and between Owner and MMOA (the "Conservation Easement"), Owner granted to MMOA a conservation easement allowing MMOA to hold an interest in and protect the conservation values and integrity of the Protected Property. The Conservation Easement is attached hereto and by reference made a part hereof as **Exhibit "C"**. No provision in the body of this Agreement shall be deemed to supersede, nor be construed as more stringent than, any specific term of said Conservation Easement and if any provision in the body of this Agreement shall directly conflict with any term in said Conservation Easement, then such term of the Conservation Easement shall control for all purposes and intents.

C. Owner desires to enter into this Agreement with MMOA in order to provide for the oversight of the Protected Property and to insure the compliance of the Protected Property with the Mitigation Plan Instruments, which compliance is beneficial to the Property and all persons or entities hereinafter acquiring any interest therein.

D. Owner desires and intends that all persons or entities hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Property and the Protected Property.

E. Owner desires and intends that the Protected Property shall remain as a mitigation area for the mutual benefit of any Successor Owner (as defined below) when title to the Protected Property is conveyed to any Successor Owner.

NOW, THEREFORE, in consideration of the recitals set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE I** **DEFINITIONS**

Unless the context clearly requires otherwise, the following terms used in this Agreement are defined as follows:

1.1 **“Default Rate of Interest”** means an annual rate of interest equal to the prime rate (or equivalent) as announced by United Missouri Bank (as the rate charged to its largest and most creditworthy customers) from time to time while interest is accruing (with interest hereunder adjusted as and when said prime rate is adjusted) plus 4% per annum, but never less than 12% (so that if during any periods while interest is accruing said prime rate plus 4% per annum is less than 12%, interest shall accrue during said periods at 12% per annum). Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said period shall be the highest lawful rate. If United Missouri Bank should cease doing business or no longer announce its prime rate as described above, MMOA may compute interest hereunder upon the announced prime rate of any other bank doing business in Missouri. If banks should cease announcing prime rates, MMOA may elect to use 12% as the Default Rate of Interest, or may specify as the rate for purposes of the computation hereunder, in lieu of said prime rate, the rate that Owner or any Successor Owner, as applicable, would reasonably have to pay to borrow money at the time.

1.2 **“Fees”** means, collectively, the Oversight Fee and the Special Fee.

1.3 **“Lot”** means a subdivided lot or a residential dwelling unit within the Property.

1.4 **“Mortgage”** means any recorded, filed, or otherwise perfected instrument given in good faith and for valuable consideration that is not a fraudulent conveyance under Missouri law as security for the performance of an obligation, including without limitation a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.5 **“Owner”** means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any part of the Protected Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. In the case of fee simple title to which is vested of record in a trustee, legal title shall be deemed to be in the trustor.

1.6 **"Oversight Fee"** means the annual fee paid by Owner to MMOA in accordance with Section 5.1 hereof.

1.7 **"Person"** means an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.8 **"Plat"** means the plat of the Property as first recorded in the official records of Cass County, Missouri, and as thereafter from time to time amended or supplemented, together with all subsequent plans of subdivision for real property annexed to the Property.

1.9 **"Record"** means an instrument of record in, or the act of recording an instrument with, the office of the Recorder of Deeds for Cass County, Missouri.

1.10 **"Special Fee"** means the fee paid by Owner or a Successor Owner to MMOA in accordance with Section 5.2 hereof.

1.11 **"Successor Owner"** means any successor or assign of Owner owning any right, title or interest in or to the Property or the Protected Property.

## **ARTICLE II**

### **The Property**

2.1 **The Property.** Owner hereby subjects the Property to this Agreement for the purpose of governing the maintenance and management of the Protected Property. For the purposes set forth in the above Recitals, Owner declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right title, or interest in or to the Property, and shall inure to the benefit of and be a burden upon each Lot. Each Owner, by taking title to any portion of the Property, agree to be bound by the terms hereof in accordance with Section 8.5 below.

## **ARTICLE III**

### **Term**

3.1 **Term.** The term of this Agreement shall commence upon the date hereof and shall continue until the anniversary of the execution hereof, in 2067 (the "Initial Term"); provided, that the Initial Term and any extended term shall be automatically extended for additional period of ten (10) years unless a notice of termination is placed of Record by Owner, or MMOA at least six (6) months prior to the end of the Initial Term or any extended term.

## **ARTICLE IV**

### **Maintenance, Repairs and Replacements**

#### **4.1 MMOA's Responsibilities.**

(a) to the extent funds are provided as required in Article V hereof, MMOA

hereby agrees to perform or provide for the performance of the following duties and services:

- (i) monitor compliance by Owner or any Successor Owner, including, without limitation, this Agreement, the Conservation Easement and the Mitigation Plan Instruments;
  - (ii) prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Agreement, the Conservation Easement or the Mitigation Plan Instruments;
  - (iii) enter upon the Protected Property to carry out the services and duties enumerated in (i) and (ii) above;
  - (iv) enforce, by proceedings at law or in equity, this Agreement and the Conservation Easement; and
  - (v) to act as authorized under the Mitigation Plan Instruments, this Agreement and the Conservation Easement, and to account to Owner or any Successor Owner, for its actions regarding the Protected Property and monies it receives and/or expends in connection with this Agreement.
- (b) MMOA may assign its rights and duties hereunder to any officer or director of MMOA or any other Missouri not-for-profit entity with substantially similar purposes as MMOA, after notice to Owner or any Successor Owner, as the case may be.

#### 4.2 Owner's Responsibilities.

- (a) Owner hereby covenants that it shall:
  - (i) comply with the terms of this Agreement, the Mitigation Plan Instruments, the Conservation Easement and the Plat;
  - (ii) cause the Plat to include reference to the Protected Property as "protected area" or similar designation;
  - (iii) cause the Protected Property to be evidenced on the Plat as a parcel of real property, separate and distinct from the Property, which may be alienated separately from the Property;
  - (iv) cause the Protected Property, upon any conveyance of any portion of the Property, to be platted as a separate, alienable parcel, distinct from the Property; and
  - (v) provide written notice to MMOA at such time as the Protected Property is conveyed to any Successor Owner.

**ARTICLE V**  
**Payment of Fees**

5.1 **Oversight Fee.** After title to the Protected Property passes to any Successor Owner, MMOA shall assess an annual Oversight Fee in an amount necessary to allow MMOA to perform its obligations hereunder plus a commercially reasonable charge for overhead and profit. The Oversight Fee shall be \$750; thereafter, the Oversight Fee shall not increase by more than 5% per year.

5.2 **Special Fees.** Special Fees shall be levied by MMOA against Owner or, as applicable, any Successor Owner, to reimburse MMOA for:

(a) costs incurred in bringing Owner or any Successor Owner into compliance with the provisions of this Agreement or the Conservation Easement following notice and opportunity for cure to Owner or any Successor Owner. Owner or any Successor Owner, as applicable, shall cure any such violation within thirty (30) days of receipt of notice thereof from MMOA, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, begin to cure such violation within such thirty (30) day period and diligently pursue such cure to completion;

(b) any other charge designated as a Special Fee in this Agreement;

(c) fines levied or fixed by MMOA as provided herein; and

(d) attorneys' fees, interest and other costs or charges provided to be paid pursuant to, or which are incurred in connection with, this Agreement or the Conservation Easement as provided in Article VI.

Special Fees shall be paid by Owner as applicable, within ten (10) days following notice from MMOA of the amount due.

5.3 **Continuing Lien on Protected Property.** Owner and any Successor Owner, hereby covenants and agrees to pay any and all of the Oversight Fees, Special Fees or other amounts due hereunder to MMOA in accordance with the terms hereof. The Fees and all other amounts due under the terms hereof shall be a continuing lien upon the Protected Property. Such lien shall attach immediately and automatically when any Fee is due and payable.

5.4 **Late Charges and Interest.** If not paid within thirty (30) days after its due date, each Fee shall have added to it a late charge equal to ten percent (10%) of the amount of such Fee and thereafter bear interest at the Default Rate of Interest until paid. MMOA may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. If delinquent, Owner or any Successor Owner, as applicable and to the extent allowed by then applicable law and this Agreement, shall be liable for reasonable attorneys' fees and other related costs incurred by MMOA as a result of such delinquency, and if any suit, action or proceeding is brought to collect any such Fee or charge or to otherwise enforce the provisions of this Agreement, then there shall

be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

5.5 **No Offsets.** All Fees shall be payable without offset of any kind or for any reason, including, without limitation, a claim that MMOA is not properly exercising its duties and powers as provided in this Agreement.

5.6 **Enforcement of Lien.** Any lien against the Protected Property provided for in this Article V may be foreclosed by MMOA in any manner provided or permitted for the foreclosure of realty mortgages or liens in the State of Missouri.

## **ARTICLE VI**

### **Remedies**

6.1 **General Remedies.** In the event of any default by Owner or any Successor Owner (each a "**Defaulting Party**") under the provisions of this Agreement and following notice and opportunity for cure to Owner or any such Successor Owner, as more specifically provided in Section 5.2(a) of this Agreement, MMOA or its successors, assigns or agents, shall have each and all of the rights and remedies provided for in this Agreement, or any amendments hereto, or that may be available at law or in equity, and may prosecute any action or other proceedings against such Defaulting Party for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Protected Property, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Protected Property and to sell the same as provided in this Agreement, or for any combination of remedies, or for any other relief, all without regard to the value of the Protected Property or the solvency of such Defaulting Party. The proceeds of any sale shall first be paid to discharge court costs, other litigation costs, including, without limitation, reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the Defaulting Party in a final judgment. Any balance of proceeds after satisfaction of such charges and liens for any unpaid Fees hereunder shall be paid to the Defaulting Party. Upon the confirmation of the sale, the purchasers at such sale shall be entitled to a deed to the Protected Property and to immediate possession thereof.

6.2 **Expenses of Enforcement.** All expenses of MMOA in connection with any action or proceeding described or permitted by this Article, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon, until paid at the Default Rate of Interest, shall be charged to and assessed against such Defaulting Party and shall be a Special Fee against such Defaulting Party and MMOA shall have a lien as provided in Article V therefor, unless the alleged default giving rise to such claimed expenses, court costs, attorneys' fees, damages and interest is successfully contested by Owner or any Successor Owner through appropriate legal, equitable or administrative action. In the event of any such claimed default and Owner or any Successor Owner fails to correct such default following notice and opportunity for cure, as more specifically provided in Section 5.2(a) of this Agreement, MMOA shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses

incurred in connection therewith shall be charged to and assessed against such Defaulting Party as a Special Fee, which shall constitute a lien against the Protected Property as provided in Article V. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by MMOA.

## **ARTICLE VII**

### **Amendment**

7.1 **Amendments.** Amendments to this Agreement shall be made by an instrument in writing, setting forth the entire amendment. Any proposed amendment must be approved and executed by MMOA and Owner or any Successor Owner. Amendments once properly adopted shall be effective upon placing such amendment of Record.

## **ARTICLE VIII**

### **General Provisions**

8.1 **Notices.** Notices provided for in this Agreement shall be in writing and shall be addressed to the appropriate party at the address specified above. The parties may designate a different address or addresses for notice, from time to time, by giving written notice of such change of address to the other parties at such time. All notices to the Owner or any Successor Owner shall be to the last address shown on the records of MMOA. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.

8.2 **Captions and Exhibits; Construction; Gender.** Captions given to various Sections herein are for convenience of reference only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various appendices referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Agreement shall be literally construed to effectuate its purpose of creating a uniform plan for the maintenance and oversight of the Protected Property, as hereinabove set forth. Whenever the context of this Agreement so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine; words used in the singular shall include the plural; and words used in the plural shall include the singular.

8.3 **Severability.** If any provision of this Agreement, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Agreement and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstance, shall not be affected thereby, and the remainder of this Agreement shall be construed as if such invalid part were never included therein.

8.4 **Rule Against Perpetuities.** If any interest purported to be created by this Agreement is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the



challenged interest. The "lives in being" for computing the period of perpetuities shall be: (a) those which would be used in determining the validity of the challenged interest, and (b) those of the issue of the President of MMOA who are living at the time the period of perpetuities starts to run on the challenged interest.

8.5 **Acceptance of Agreement.** Any Successor Owner, each grantee of Owner and their respective successors and assigns, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges against the Protected Property, and the jurisdiction, rights and powers created or reserved by this Agreement and the Conservation Easement, and all rights, benefits and privileges of every character hereby and thereby granted, created, reserved or declared, and all impositions and obligations hereby and thereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in said land, and shall inure to the benefit of any such Person in like manner as though the provisions of this Agreement and the Conservation Easement were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

8.6 **Recitals.** The Recitals to this Agreement are a material part hereof.


8.7 **Successor and Assigns.** Subject to the limitations concerning assignment herein, this Agreement shall be binding on the parties, their respective heirs, legal representatives, successors and assigns.

8.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

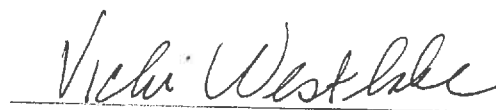
[Remainder of page intentionally blank]

IN WITNESS WHEREOF, Owner and MMOA have caused this Agreement to be duly executed as of the day and year above written.

**OWNER:**

  
\_\_\_\_\_  
Scott Westlake

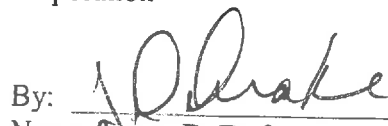
Date: 12/22/2017

  
\_\_\_\_\_  
Vicki Westlake

Date: 12/22/2017

**MMOA:**

MIDWEST MITIGATION OVERSIGHT  
ASSOCIATION, a Missouri not-for-profit  
corporation

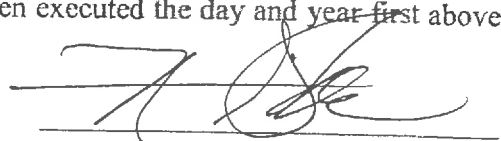
By:   
\_\_\_\_\_  
Name: James D. Drake  
Title: President

Date: 8-8-2017

STATE OF Kansas )  
 ) ss.  
COUNTY OF Johnson )

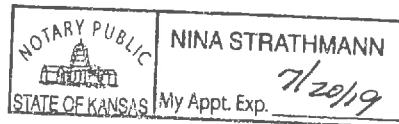
On this 22nd day of December 2017, before me, the undersigned notary public, personally appeared Scott Westlake and Vicki Westlake known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

IN WITNESS WHEREOF, the foregoing has been executed the day and year first above written.

  
Notary Public

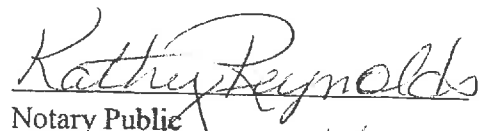
My Commission Expires:

STATE OF Missouri )  
 ) ss.  
COUNTY OF Jackson )



On this 8 day of August, 2017, before me appeared James D. Drake to me personally known, who, being by me duly sworn (or affirmed) did say that he is the President of Midwest Mitigation Oversight Association, Inc., and that the seal affixed to foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said James D. Drake acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, the foregoing has been executed the day and year first above written.

  
Notary Public  
Kathy Reynolds

My Commission Expires:

June 15, 2018

KATHY REYNOLDS  
Notary Public-Notary Seal  
State of Missouri  
Commissioned for Jackson County  
My Commission Expires; June 15, 2018  
Commission Number; 14985331

**EXHIBIT A**

**Legal Description of the Property**

[Insert legal description]

## LEGAL DESCRIPTION OF PROPERTY

The North Half of the North Half of the Northwest Quarter of Section 26; The South Half of the Southwest Quarter of Section 23; The Southwest Quarter of the Southeast Quarter of Section 23, except those portions heretofore conveyed to James L. Parris, Jr., et ux, by Warranty Deed dated November 20, 1997 and recorded in Book 1622, Page 53, in the Cass County Recorder of Deed Records; The Northeast Quarter of the Southwest Quarter of Section 23, except therefrom the following described tract: A part of the Northeast Quarter of the Southwest Quarter of Section 23, Township 46, Range 31, Cass County, Missouri, described as follows: Beginning at the Northwest corner of said Quarter Quarter Section; thence South 02 degrees 19 minutes 15 seconds West, a distance of 1318.50 feet; thence East 21 feet; thence North 02 degrees 19 minutes 15 seconds East, 1318.50 feet to a point in the North line of said Quarter Quarter Section; thence West 21 feet to the point of the beginning, and 37.5 acres, more or less, described as follows: Commencing 7 rods 3 links South of the Northeast corner of the Northwest Quarter of the Southeast Quarter of Section 23; thence South to the Southeast corner of the Northwest Quarter of the Southeast Quarter of said Section; thence West 80 rods; thence North 78 rods, more or less, to the public road; thence Southeasterly 80 rods, more or less, to the place of beginning, except therefrom those portions heretofore conveyed to Orbie Farnsworth, et ux, by Quit Claim Deed dated January 9, 1984, and recorded in Book 857, Page 199; and conveyed to Walter D. Harrison, et ux, by Warranty Deed dated December 6, 1983, and recorded in Book 801, Page 270, of said Recorder's records; and 22.5 acres, more or less, being a part of the Southeast Quarter of the Southeast Quarter of Section 22, and a part of the Northeast Quarter of the Northeast Quarter of Section 27, described as follows: Beginning at the Northeast corner of Section 27; thence South 40 rods; thence West 36 rods; thence North 100 rods; thence East 36 rods; thence South 60 rods to beginning; all being in Township 46, of Range 31, Cass County, Missouri.

**EXHIBIT B**

**Legal Description of the Protected Property**

[Insert legal description]

## LEGAL DESCRIPTION OF PROTECTED PROPERTY

All that part of the Southeast Quarter of Section 22, together with all that part of the Southeast and Southwest Quarters of Section 23, together with all that part of the Northwest Quarter of Section 26, together with all that part of the Northeast Quarter of Section 27, all in Township 46 North, Range 31 West, Cass County, Missouri, more particularly described as follows:

Commencing at the Northeast corner of the Northwest Quarter of said Section 26; thence North  $87^{\circ}33'51''$  West, coincident with the North line of said Northwest Quarter, 20.00 feet to the Point of Beginning; thence departing said North line, South  $66^{\circ}05'57''$  West, 780.99 feet; thence South  $45^{\circ}26'45''$  West, 399.97 feet to a point 20 feet north of the South line of the North half of the Northwest Quarter of said Section 26; thence North  $87^{\circ}44'46''$  West, coincident with a line 20 feet north of and parallel with said South line, 1,671.85 feet to a point on the East line of the Northeast Quarter of the Northeast Quarter of said Section 27; thence coincident with said East line, North  $00^{\circ}02'08''$  East, 43.60 feet; thence departing said East line, North  $57^{\circ}01'23''$  West, 55.51 feet; thence North  $21^{\circ}24'09''$  West, 196.34 feet; thence North  $33^{\circ}52'06''$  West, 185.80 feet; thence North  $43^{\circ}20'17''$  West, 155.07 feet; thence North  $52^{\circ}29'24''$  West, 197.44 feet; thence North  $56^{\circ}23'38''$  West, 41.64 feet to a point on the South line of the Southeast Quarter of said Section 22; thence continuing North  $56^{\circ}23'38''$  West, 34.74 feet; thence North  $02^{\circ}17'48''$  East, 952.02 feet; thence South  $87^{\circ}33'50''$  East, 387.12 feet; thence South  $58^{\circ}27'51''$  East, 214.27 feet to a point on the West line of the Southwest Quarter of the Southwest Quarter of said Section 23; thence continuing South  $58^{\circ}27'51''$  East, 374.77 feet; thence North  $00^{\circ}22'02''$  East, 615.59 feet to a point 20 feet south of the North line of the South half of the Southwest Quarter of said Section 23; thence South  $87^{\circ}37'11''$  East, coincident with a line 20 feet south of and parallel with said North line, 1,069.41 feet; thence North  $02^{\circ}19'30''$  East, 20.00 feet to a point on the South line of the Northeast Quarter of the Southwest Quarter of said Section 23; thence North  $02^{\circ}19'30''$  East, coincident with a line 40 feet east of and parallel with the West line of the Northeast Quarter of said Southwest Quarter, 40.00 feet; thence South  $89^{\circ}54'46''$  East, 467.42 feet; thence South  $42^{\circ}27'47''$  East, 82.79 feet to a point on the North line of the South half of the Southwest Quarter of said Section 23; thence continuing South  $42^{\circ}27'47''$  East, 198.46 feet; thence South  $01^{\circ}50'30''$  East, 616.17 feet; thence North  $81^{\circ}37'03''$  East, 364.63 feet; thence North  $47^{\circ}00'50''$  East, 320.28 feet to a point on the West line of the Southwest Quarter of the Southeast Quarter of said Section 23; thence continuing North  $47^{\circ}00'50''$  East, 301.97 feet; thence North  $02^{\circ}58'36''$  East, 244.56 feet to a point on the South line of the Northwest Quarter of the Southeast Quarter of said Section 23; thence continuing North  $02^{\circ}58'36''$  East, 283.84 feet; thence North  $28^{\circ}54'05''$  East, 115.03; thence North  $01^{\circ}07'45''$  West, 82.83 feet; thence South  $89^{\circ}51'20''$  East, 35.16 feet; thence South  $01^{\circ}28'22''$  East, 93.45 feet; thence South  $28^{\circ}34'23''$  West, 125.89 feet; thence South  $02^{\circ}26'44''$  West, 232.59 feet; thence South  $25^{\circ}49'44''$  East, 36.26 feet to a point on the North line of the Southwest Quarter of the Southeast Quarter of said Section 23; thence continuing South  $25^{\circ}49'44''$  East, 125.34 feet; thence South  $86^{\circ}25'00''$  East, 659.00 feet; thence South  $06^{\circ}22'59''$  West, 180.41 feet; thence South  $54^{\circ}31'38''$  East, 407.68 feet to a point 20 feet west of the East line of the Southwest Quarter of the Southeast Quarter of said Section 23; thence South  $02^{\circ}26'36''$  West, coincident with a line 20 feet west of and parallel to said East line, 260.29 feet; thence South  $39^{\circ}17'56''$  West, 561.03 feet; thence North  $87^{\circ}35'46''$  West, 976.62 feet to a point on the East line of the Southeast Quarter of the Southwest Quarter of said Section 23; thence continuing North  $87^{\circ}35'46''$  West, 20.00 feet to a point 20 feet west of said East line; thence South  $02^{\circ}23'37''$  West, coincident with a line 20 feet west of and parallel to said East line, 85.99 feet to the Point of Beginning, containing 142.707 acres, more or less.

**EXHIBIT C**

**Conservation Easement**

See attached.



Recorded in Cass County, Missouri



Recording Date/Time: 12/28/2017 at 03:42:55 PM

Book: 4205 Page: 69

Instr #: 618920

Type: EASE

Pages: 9

Fee: \$48.00 S 20170017180



Mike Medsker  
Recorder of Deeds

(Space above reserved for Recorder of Deeds certification)

Title of Document: *Conservation Easement*

Date of Document: *May 10, 2017*

Grantor(s): *Scott & Vicki Westlake*

Grantee(s): *Midwest Mitigation Oversight Association, Inc.*

Mailing Address: *21301 Shelby Lane, Belton, Mo 64012*

Reference Book and Page:

Legal Description: *see last page*

If there is not sufficient space on this page for the information required, state the page reference where it is contained within the document

**Statutory Recorders Fees First Page of Each Document**

Homeless Fee – State	\$3.00
User Fee – State	\$2.00
State Statutory Pool	\$2.00
County Employee Retirement Fund	\$7.00
Record Reservation- Recorder	\$2.00
Technology Fund-Recorder	\$1.25
General Revenue- County	\$6.75

TOTAL FIRST PAGE FEE	\$24.00
Each additional page	\$3.00

**Mike Medsker**  
Recorder of Deeds  
Cass County Courthouse  
102 E Wall St  
Harrisonville, Missouri 64701  
1-816-380-8118  
[mikem@casscounty.com](mailto:mikem@casscounty.com)

## CONSERVATION EASEMENT

**THIS DEED OF CONSERVATION EASEMENT** is given this 10<sup>th</sup> day of May, 2017, by Scott & Vicki Westlake, having an address of 4731 Bonita Bay Blvd #1403, Bonita Springs, FL 34134 ("Grantor") to Midwest Mitigation Oversight Association Inc, having an address of 21301 Shelby Lane, Belton, MO 64012 ("Grantee"). As used herein, the term "Grantor" shall include any and all heirs, successors, or assigns of the Grantor, and all subsequent owners of the Property (as hereinafter defined), and the term "Grantee" shall include any successor or assignee of Grantee.

### WITNESSETH:

**WHEREAS**, Grantor is the sole owner in fee simple title of certain lands situated in Cass County, Missouri, more particularly described in Exhibit A, attached hereto and incorporated herein ("Property"); and

**WHEREAS**, Department of the Army (DA) Regulatory Action No. NWK-2007-268 of the U.S. Army Corps of Engineers ("Corps") (hereinafter referred to as the "Regulatory Action") authorizes certain activities by the permittee which affect waters of the United States; and

**WHEREAS**, this Regulatory Action requires actions to preserve, enhance, restore, or mitigate streams, wetlands or uplands located on the Property; and

**WHEREAS**, Grantor, in consideration of compensation from the permittee and as an inducement to the authorization of the Regulatory Action, is willing to grant a perpetual Conservation Easement over the Property; and

**NOW THEREFORE**, in consideration of the above and mutual covenants, terms conditions, and restrictions contained herein, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby voluntarily grants and conveys a perpetual Conservation Easement for and in favor of Grantee upon the property, which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. **Purpose:** The purpose of this Conservation Easement is to retain and maintain land or water areas on the Property in their natural, vegetative, hydrologic, scenic, open, or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife. Those wetland or upland areas that are to be restored, enhanced, created, or preserved on the Property shall be retained and maintained in the restored, enhanced, created, or preserved condition as described in the Regulatory Action and/or in the associated compensatory mitigation plan for the Property.

2. **Rights of Grantee:** The following rights are conveyed to the Grantee and to the Corps by this easement:

a. The right to take action to preserve and protect the environmental value of the Property; and

b. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;

c. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor is complying with the covenants and prohibitions contained in this Conservation Easement; and

d. The right to proceed at law or in equity to enforce the provisions of this Conservation Easement, and to prevent the occurrence of any of the prohibited activities hereinafter set forth.

**3. Prohibited Uses:** Except for restoration, creation, enhancement, preservation, maintenance, and monitoring activities, or surface water management improvements, required by the Regulatory Action, or required by the compensatory mitigation plan, or are otherwise approved by the Corps, the following activities are prohibited on the Property:

a. Construction of any structure or object (i.e., buildings, roads, above or below ground utilities, signs, billboards etc.) without written approval from the Corps of Engineers prior to construction;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by Corps;

d. Planting of nuisance, exotic, or non-native plants as listed by the State of Missouri;

e. Exploration for, or extraction of, oil or gas in such a manner as to affect the surface, or excavation, dredging, or removal of coal, loam, peat, gravel, soil, rock, or other material substance;

f. Use of motorized and non-motorized vehicles, the keeping or riding of horses, grazing, livestock confinement, or other surface use that may affect the natural condition of the Property, except for vehicle use for purposes of maintenance and upkeep;

g. Tilling, plowing, planting of crops, digging, mining, or other activities that are or may be detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or fish and wildlife habitat preservation, including but not limited to ditching, diking, and fencing;

h. The extraction of water from the Property or the impoundment of water on the Property so as to affect the hydrology of the Property;

i. Acts or uses detrimental to the aforementioned retention and maintenance of land or water areas;

j. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

4. **Reserved Rights:** Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein, and that are not inconsistent with the intent and purposes of this Conservation Easement.

5. **Taxes:** Grantor shall pay any and all applicable real property taxes and assessments levied by competent taxing authority on the Property.

6. **Maintenance:** Grantor shall, at Grantor's sole expense, operate, maintain and keep up the Property consistent with the purpose of this Conservation Easement. Grantor shall remove from the Property any nuisance, exotic, or non-native plants as listed by the State of Missouri and shall maintain the hydrology of the Property as it currently exists or as otherwise required by the Regulatory Action or as required by the compensatory mitigation plan or as required by the Corps approved final mitigation banking instrument.

7. **Hazardous Waste:** Grantor covenants that if any hazardous substances or toxic waste exist or has been generated, treated, stored, used, disposed of, or deposited in or on the Property, or there are or have been any underground storage tanks on the Property, Grantor shall be responsible for any and all necessary costs of remediation.

8. **Public Access:** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement, and Grantor further covenants not to hold any portion of the Property open to general use by the public except with the written permission of the Corps and Grantee.

9. **Liability:** Grantor shall continue to retain all liability for any injury or damage to the person or property of third parties that may occur on the Property arising from ownership of the Property. Neither Grantor, nor any person claiming by or through Grantor, shall hold Grantee liable for any damage or injury that may occur on the Property.

10. **Recording Requirements:** Grantor must record this Conservation Easement in the official records of Cass County, Missouri, and shall re-record it at any time Grantee or the Corps may require to preserve their rights. Grantor shall pay all recording costs, fees and taxes necessary at any time to record this Conservation Easement in the public records. Grantor shall thereafter insert the terms and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which Grantor divests himself/herself/itself of any interest in the

Property, and shall provide a photocopy of the recorded Conservation Easement to the new owner(s).

**11. Enforcement:** The terms and conditions of this Conservation Easement may be enforced in an action at law or equity by the Grantee or the Corps against the Grantor violating or attempting to violate these Restrictions. Venue for any such action shall be in Cass County, Missouri. Enforcement of this Conservation Easement shall be at the reasonable discretion of the Grantee or the Corps, and any forbearance on behalf of Grantee or the Corps to exercise its or their rights hereunder in the event of any breach by Grantor shall not be deemed or construed to be a waiver of rights. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions, and restrictions of this Conservation Easement, including without limitation, the costs of suit, and attorney's fees, shall be borne by and recoverable against the non-prevailing party in such proceedings, except that such costs shall not be recoverable against the Corps. In addition, if the Grantee or the Corps shall prevail in an enforcement action, such party shall also be entitled to recover that party's cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of these Restrictions or to the vegetative and hydrologic condition required by the Regulatory Action and/or as required by the associated compensatory mitigation plan.

**12. Assignment of Rights:** Grantee shall hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement, except to another legal entity qualified to hold such interests under applicable state and federal laws and committed to holding this Conservation Easement exclusively for the purposes stated herein. Grantee shall notify the Corps in writing of any intention to reassign this Conservation Easement to a new grantee at least sixty (60) days in advance thereof, and the Corps must accept the assignment in writing. The new grantee shall then deliver a written acceptance to the Corps. The assignment instrument must then be recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the assignment instrument shall be furnished to the Corps. Failure to comply with the assignment procedure herein stated shall result in invalidity of the assignment. In the event of dissolution of the Grantee or any successor, or failure for 60 days or more to execute the obligations of this Conservation Easement, the Grantee shall transfer this Conservation Easement to a qualified and willing grantee. Upon failure of the Grantee or any successor to so transfer the Conservation Easement, the Corps shall have the right to sue to force such an assignment to a grantee to be identified by the Court.

**13. Successors:** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

**14. Notices:** All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

15. **Severability:** If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

16. **Alteration or Revocation:** This Conservation Easement, granted in perpetuity, may be amended, altered, released, canceled, or revoked only by written agreement between the parties hereto or their heirs, assigns, or successors in interest, which shall be filed in the public records of Cass County, Missouri. No action shall be taken, however, without advance written approval thereof by the Corps. Corps approval shall be by letter attached as an exhibit to the document amending, altering, canceling, or revoking the Conservation Easement, and said letter shall be informal and shall not require notarization. It is understood and agreed that Corps approval requires a minimum of sixty (60) days written notice, and that the Corps may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment, alteration, release, cancellation, or revocation together with written Corps approval thereof shall then be filed in the public records of Cass County, Missouri, within 30 days thereafter.

17. **Controlling Law:** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Missouri.

**GRANTOR FURTHER COVENANTS** that Grantor is lawfully seised of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement and that no mortgages or other liens exist; that Grantor has good right and lawful authority to convey this Conservation Easement, and that it hereby fully warrants and defends the title to the Conservation Easement hereby conveyed against the lawful claims of all persons whomsoever.

**TO HAVE AND TO HOLD**, the Grantor covenants that he, she, or they are vested with good title to the easement area and will warrant and defend the same on behalf of the Grantee against all claims and demands. The Grantor covenants to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed. The covenants, terms, conditions, restrictions, and purpose imposed with this Conservation Easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Dated this 10<sup>th</sup> day of May, 2017

Grantor(s): Scott Westlake  
Print Name

Scott Westlake  
Signature

Signature(s) continued:

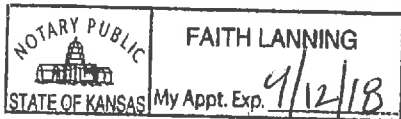
Vicki Westlake  
Print Name  
Vicki Westlake  
Signature

ACKNOWLEDGEMENT

STATE OF KANSAS

COUNTY OF JOHNSON

On this 10th day of May in the year 2017, before me, the undersigned notary public, personally appeared Scott & Vicki Westlake known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.



Notary Public

Residing at 13451 Buvar Leawood, KS 66209

My Commission

Expires 9/12/18 Faith Lanning

ACCEPTANCE BY GRANTEE:

I James D. Drake (print name), President (title), being the duly authorized representative of the Grantee, do hereby accept this Conservation Easement Deed with respect to the rights and duties of the, Grantee.

Dated this 28 day of December, 2017.

James D. Drake  
Signature

President  
Title



Bridget Braden  
12/28/17



## LEGAL DESCRIPTION OF PROTECTED "PROPERTY"

All that part of the Southeast Quarter of Section 22, together with all that part of the Southeast and Southwest Quarters of Section 23, together with all that part of the Northwest Quarter of Section 26, together with all that part of the Northeast Quarter of Section 27, all in Township 46 North, Range 31 West, Cass County, Missouri, more particularly described as follows:

Commencing at the Northeast corner of the Northwest Quarter of said Section 26; thence North 87°33'51" West, coincident with the North line of said Northwest Quarter, 20.00 feet to the Point of Beginning; thence departing said North line, South 66°05'57" West, 780.99 feet; thence South 45°26'45" West, 399.97 feet to a point 20 feet north of the South line of the North half of the Northwest Quarter of said Section 26; thence North 87°44'46" West, coincident with a line 20 feet north of and parallel with said South line, 1,671.85 feet to a point on the East line of the Northeast Quarter of the Northeast Quarter of said Section 27; thence coincident with said East line, North 00°02'08" East, 43.60 feet; thence departing said East line, North 57°01'23" West, 55.51 feet; thence North 21°24'09" West, 196.34 feet; thence North 33°52'06" West, 185.80 feet; thence North 43°20'17" West, 155.07 feet; thence North 52°29'24" West, 197.44 feet; thence North 56°23'38" West, 41.64 feet to a point on the South line of the Southeast Quarter of said Section 22; thence continuing North 56°23'38" West, 34.74 feet; thence North 02°17'48" East, 952.02 feet; thence South 87°33'50" East, 387.12 feet; thence South 58°27'51" East, 214.27 feet to a point on the West line of the Southwest Quarter of the Southwest Quarter of said Section 23; thence continuing South 58°27'51" East, 374.77 feet; thence North 00°22'02" East, 615.59 feet to a point 20 feet south of the North line of the South half of the Southwest Quarter of said Section 23; thence South 87°37'11" East, coincident with a line 20 feet south of and parallel with said North line, 1,069.41 feet; thence North 02°19'30" East, 20.00 feet to a point on the South line of the Northeast Quarter of the Southwest Quarter of said Section 23; thence North 02°19'30" East, coincident with a line 40 feet east of and parallel with the West line of the Northeast Quarter of said Southwest Quarter, 40.00 feet; thence South 89°54'46" East, 467.42 feet; thence South 42°27'47" East, 82.79 feet to a point on the North line of the South half of the Southwest Quarter of said Section 23; thence continuing South 42°27'47" East, 198.46 feet; thence South 01°50'30" East, 616.17 feet; thence North 81°37'03" East, 364.63 feet; thence North 47°00'50" East, 320.28 feet to a point on the West line of the Southwest Quarter of the Southeast Quarter of said Section 23; thence continuing North 47°00'50" East, 301.97 feet; thence North 02°58'36" East, 244.56 feet to a point on the South line of the Northwest Quarter of the Southeast Quarter of said Section 23; thence continuing North 02°58'36" East, 283.84 feet; thence North 28°54'05" East, 115.03 feet; thence North 01°07'45" West, 82.83 feet; thence South 89°51'20" East, 35.16 feet; thence South 01°28'22" East, 93.45 feet; thence South 28°34'23" West, 125.89 feet; thence South 02°26'44" West, 232.59 feet; thence South 25°49'44" East, 36.26 feet to a point on the North line of the Southwest Quarter of the Southeast Quarter of said Section 23; thence continuing South 25°49'44" East, 125.34 feet; thence South 86°25'00" East, 659.00 feet; thence South 06°22'59" West, 180.41 feet; thence South 54°31'38" East, 407.68 feet to a point 20 feet west of the East line of the Southwest Quarter of the Southeast Quarter of said Section 23; thence South 02°26'36" West, coincident with a line 20 feet west of and parallel to said East line, 260.29 feet; thence South 39°17'56" West, 561.03 feet; thence North 87°35'46" West, 976.62 feet to a point on the East line of the Southeast Quarter of the Southwest Quarter of said Section 23; thence continuing North 87°35'46" West, 20.00 feet to a point 20 feet west of said East line; thence South 02°23'37" West, coincident with a line 20 feet west of and parallel to said East line, 85.99 feet to the Point of Beginning, containing 142.707 acres, more or less.