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STACY R. DRISCOLL/REGISTER OF DEEDS
LEAVENWORTH COUNTY
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1.	Title of Document:	Conservation Easement
2.	Date of Document:	December 31, 2014
3.	Grantor:	Swallow Tail LLC 24820 Miller Road Harrisonville, MO 64701
4.	Grantees:	Midwest Mitigation Oversight Association, Inc., a Missouri non-profit corporation and its successors in interest
5.	Statutory Mailing Address:	Midwest Mitigation Oversight Association Mr. James Drake PO Box 480271 Kansas City, MO 64148
6.	Property Descriptions:	Exhibit A-1 & A-2, Page 9 & Page 10
7.	Reference Books and Pages:	None

Swallow Tail, 24820 Miller Rd, Harrisonville, MO 64701 $92

CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this 31 day of December, 2014, by Swallow Tail LLC, having an address of 24820 Miller Road Harrisonville MO 64701 ("Grantor") to Midwest Mitigation Oversight Association Incorporated, having an address of PO Box 480271 Kansas City MO 64148 ("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 Leavenworth County, Kansas, more particularly described in Exhibit A-1 and A-2 attached hereto and incorporated herein ("Property"); and

WHEREAS, Department Permit No. NWK-2014-00576 of the U.S. Army Corps of Engineers ("Corps") (hereinafter referred to as the "Permit") authorizes certain activities which affect waters of the United States; and

WHEREAS, the Permit requires that Grantor preserve, enhance, restore, or mitigate wetlands or uplands located on the Property; and

WHEREAS, Grantor, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to the issuance of the Permit, 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 Permit 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:

Swallow Tail, 24820 Miller RD, Harrisonville, MO 64701 $92 ✓

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 Permit, 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 Kansas;

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 Kansas and shall maintain the hydrology of the Property as it currently exists or as otherwise required by the Permit 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: 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 Leavenworth County, Kansas, 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 Leavenworth County, Kansas. 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 Permit 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 Leavenworth County, Kansas. 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 Leavenworth County, Kansas, 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 Kansas.

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.

If the grantee named herein is, for any reason, determined not to be authorized or entitled to hold the interest granted herein, the Grantor shall within 60 days after notification thereof execute a substitute conservation easement to a new grantee containing terms and conditions similar to this conservation easement. The determination of lack of authority or entitlement may be made by either (a) a court of competent jurisdiction, (b) the precedential authority of a ruling by a court of competent jurisdiction, (c) a title insurance company's written refusal to insure the real property interest of the grantee named herein, or (d) a title opinion issued by an attorney at law licensed in the State of Kansas. Notification of lack of authority or entitlement of the grantee named herein may be made to the grantor by any person, including persons not privy to this easement. The substitute grantee shall be properly qualified as a "holder" under the Kansas conservation easement law, Kansas St. 58-3810 et seq. or successor statute.

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 31 day of December, 2014

Grantor(s): Swallow Tail LLC

David L Flick, Manager
Signature

David L. Flick, Manager

ACKNOWLEDGEMENT

STATE OF MISSOURI

COUNTY OF CASS

On this 31 day of December in the year 2014, before me, the undersigned notary public, personally appeared David L. Flick, 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.

David L. Flick
Managing Member
Swallow Tail LLC

Notary Public

PHILLIP ROBERTSON
Notary Public - Notary Seal
State of Missouri
Commissioned for Cass County
My Commission Expires: August 17, 2015
Commission Number: 11228954

Residing at 1004 N. Washington
Raymore MO 64083

My Commission
Expires August 17, 2015

ACCEPTANCE BY GRANTEE:

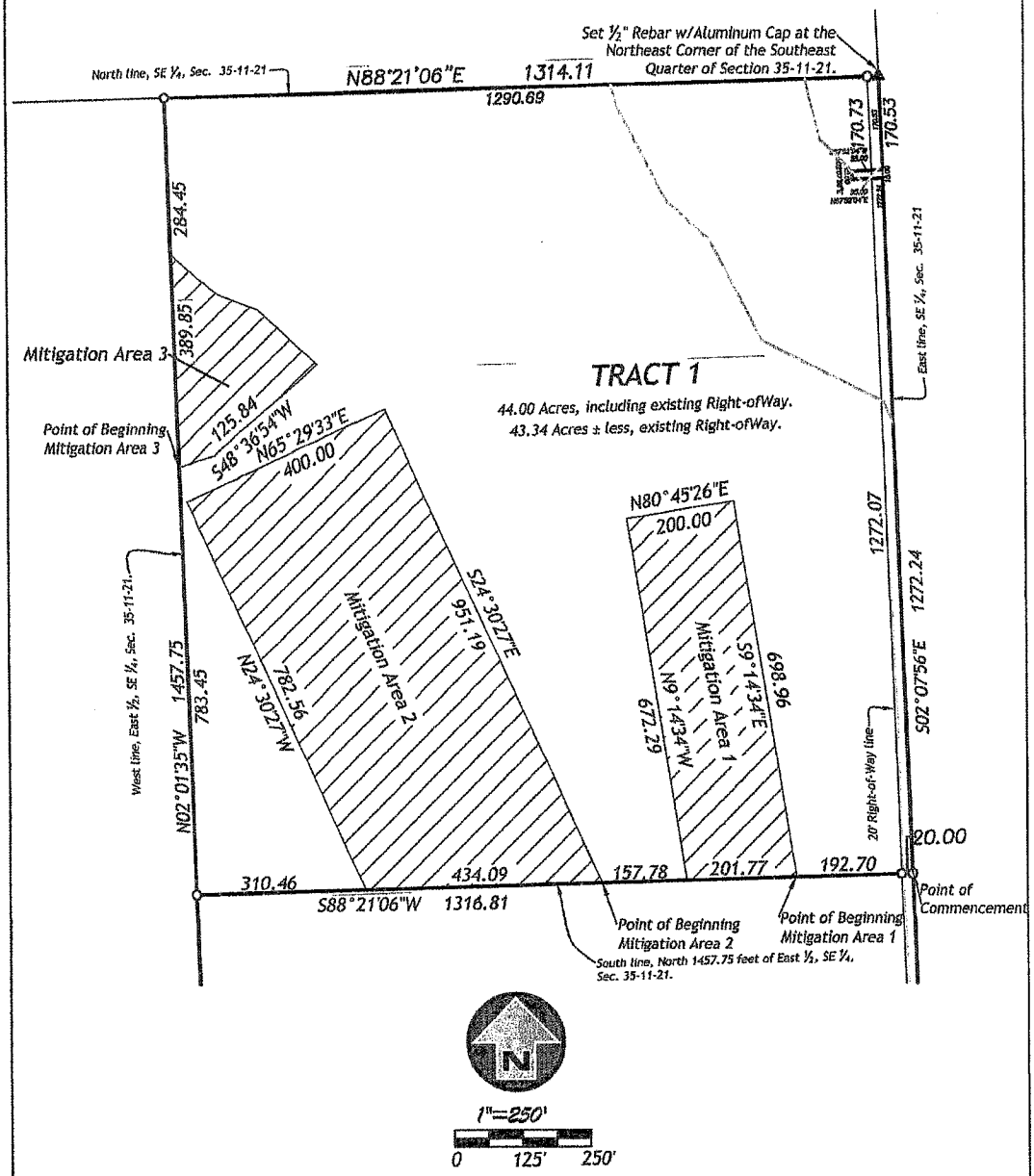
I James D. Drake, President, being the duly authorized representative of the Grantee, do hereby accept this Conservation Easement Deed with respect to the rights and duties of the, Grantee.

Dated this 31 day of December, 2014.

Signature

President
Title

EXHIBIT A-1



DESCRIPTIONS ARE ON ATTACHED SHEET

I hereby certify that this legal description has been prepared by me or under my direct supervision.

ROGER B. DILL
REGISTERED
L.S. 1408
KANSAS
LAND SURVEYOR

ROGER B. DILL L.S. 1408

ATLAS SURVEYORS
Taking care of your needs
207 South 5th Street | Leavenworth, Kansas 66048 | 913.682.8600 | 913.682.8606 (F)

EXHIBIT A-2

Description Mitigation Area 1:
A tract of land in the Southeast Quarter of Section 35, Township 11, Range 21 being more particularly described as follows: Commencing at the Southeast Corner of Tract 1, said point of Commencement being on the East line of said SE Quarter, 1457.75 feet South of the Northeast corner of said Southeast Quarter; thence South 88°21'06" West, along the South line of the North 1457.75 feet of the East ½ of said Southeast Quarter, a distance of 212.70 feet to the point of beginning; thence South 88°21'06" West, along said North line, a distance of 201.77 feet; thence North 09°14'34" West, a distance of 672.29 feet; thence North 80°45'26" East, a distance of 200.00 feet; thence South 09°14'34" East, a distance of 698.96 feet to the point of beginning.
Containing 3.15 acres more or less

Description Mitigation Area 2:
A tract of land in the Southeast Quarter of Section 35, Township 11, Range 21 being more particularly described as follows: Commencing at the Southeast Corner of Tract 1, said point of Commencement being on the East line of said SE Quarter, 1457.75 feet South of the Northeast corner of said Southeast Quarter; thence South 88°21'06" West, along the South line of the North 1457.75 feet of the East ½ of said Southeast Quarter, a distance of 573.25 feet to the point of beginning; thence South 88°21'06" West, along said North line, a distance of 434.09 feet; thence North 24°30'27" West, a distance of 782.56 feet; thence North 65°29'33" East, a distance of 400.00 feet; thence South 24°30'27" East, a distance of 951.19 feet to the point of beginning.
Containing 7.96acres more or less

Description Mitigation Area 3:
A tract of land in the Southeast Quarter of Section 35, Township 11, Range 21 being more particularly described as follows: Commencing at the Southeast Corner of Tract 1, said point of Commencement being on the East line of said SE Quarter, 1457.75 feet South of the Northeast corner of said Southeast Quarter; thence South 88°21'06" West, along the South line of the North 1457.75 feet of the East ½ of said Southeast Quarter, a distance of 1316.81 feet to the point of beginning; thence North 02°01'35" West along the West line of said East half of Southeast Quarter, a distance of 783.45 feet to the point of beginning; thence North 02°01'35" West, along said West line, a distance of 389.85 feet; thence South 46°58'18" East, a distance of 35.59; thence South 50°08'06" East, a distance of 35.34 feet; thence South 51°52'28" East, a distance of 448.49 feet; thence South 68°40'51" East, a distance of 74.99 feet; thence South 47°14'27" East, a distance of 148.41 feet; thence South 45°26'36" West, a distance of 43.44 feet; thence South 49°18'51" West, a distance of 48.30 feet; thence South 50°43'00" West, a distance of 34.19 feet; thence South 48°36'54" West, a distance of 125.84 feet; thence South 72°32'07" West, a distance of 67.84 feet to the point of beginning.
Containing 1.27 acres more or less

I hereby certify that this legal description has been prepared by me or under my direct supervision.

ROGER B. DILL REGISTERED L.S. 1408 KANSAS LAND SURVEYOR

ROGER B. DILL L.S. 1408

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