This document is provided as a guide to develop a suitable "Creation and Grant of Covenants". It is used to provide protection to project‑specific mitigation sites. Authors and reviewers are advised to carefully review the language and modify it as required.

 **CREATION AND GRANT OF**

**COVENANTS**

This GRANT OF THESE COVENANTS is made by, residing at (hereinafter referred to collectively as the "Covenantor") to the Rock Island District of the United States Army Corps of Engineers , (hereinafter referred to as "Government").

 WITNESS THAT:

 WHEREAS, the Covenantor is the owner in fee of certain real property located in the County of , in the State of Iowa, Illinois, Missouri, described more particularly as follows, and referred to herein as the "Conservancy Area": (Brief Description)

 LATITUDE:

 LONGITUDE:

|  |  |  |  |
| --- | --- | --- | --- |
| ¼ Section | Section | Township | Range |
|  |  |  |  |

 WHEREAS, the Covenantor desires and intends that the natural elements and the ecological and aesthetic values of the Conserv­ancy Area be maintained and improved in accordance with the terms and conditions of these Covenants; and

 WHEREAS, the Covenantor and Government both desire, intend and have the common purpose of conserving and preserving in perpetui­ty the Conservancy Area in a relatively natural condition by placing restrictions on the use of the Conservancy Area and by assigning from the Covenantor to the Government, by the establishment of these Covenants, affirmative rights to ensure the preservation of the natural elements and values of the Conservancy Area; and

This is to be used when the applicant owns the mitigation site.

 WHEREAS, these covenants constitute part of the environmental compensatory mitigation required under Department of the Army permit number (Corps Project ID) that the permit would not have been granted except for the creation of these covenants.

 NOW THEREFORE, the Covenantor, for valuable consideration received, does hereby establish, give and assign to the Government an assignable right to enforce the following restrictions against the Covenantor, its successors and assigns if any; any third party holding, or professing to hold, any legal or equitable title to the Conservancy Area; or any trespasser or interloper committing any act on or near the premises inconsistent with these covenants:

a. The right of the Government to enforce by proceedings at law or in equity the Covenants hereinafter set forth The right shall include but not be limited to, the right to bring an action in any court of competent jurisdiction to enforce the terms of these Covenants, to require the restoration of this property to its natural condition or to enjoin non‑compliance by appropriate injunctive relief. The Government does not waive or forfeit the right to take action as may be necessary to ensure compliance with terms of these Covenants by any prior failure to act. Nothing herein shall be construed to entitle the Government to institute any enforcement action against the Covenantor for any changes to the Conservancy Area due to causes beyond the Covenantor’s control and without the Covenantor's fault or negligence (such as changes caused by fire, flood, storm, civil or military authorities undertaking emergency action or unauthorized wrongful acts of third parties).

b. The right of the Government, its contractors, agents and invitees, to enter the Conservancy Area, in a reasonable manner and at reasonable times, for the purpose of inspecting the Conservancy Area to determine if the Covenantor is complying with the Covenants and promises, and further to observe, study, record and make scientific studies and educational observations.

 AND IN FURTHERANCE of the foregoing affirmative rights, the Covenantor makes the following covenants on behalf of themself and their heirs, successors and assigns, which covenants shall run with and bind the Conservancy Area in perpetuity:

This list is not intended to be all inclusive. Expand or delete the restrictions as necessary. If additional mitigation construction or maintenance is required in a conservancy area, ensure that these Covenants allow the mitigation plan or permit conditions to be implemented.

 **COVENANTS**

 a. USES. There shall be no commercial, industrial or residential activity undertaken or allowed within the Conservancy Area.

 b. BUILDINGS AND STRUCTURES. There shall be no buildings, dwellings, barns, roads, advertising signs, billboards or other structures built or placed in the Conservancy Area.

 c. TOPOGRAPHY. There shall be no dredging, filling, excavating, mining, drilling or removal of any topsoil, sand, gravel, rock, minerals or other materials. There shall be no plowing or any other activity that would alter the topography of the Conservancy Area.

 d. DUMPING/DISPOSAL. There shall be no dumping of trash, ashes, garbage or other unsightly or offensive material, especially including any hazardous or toxic waste.

 e. WATER. The hydrology of the Conservancy Area will not be altered in any way or by any means including pumping, draining, diking, impounding or diverting surface or ground water into or out of the Conservancy Area.

 f. AGRICULTURAL USES. No plowing, tilling, cultivating, planting, timbering, or other agricultural activities may take place within the Conservancy Area.

 g. The Covenantor is responsible for compliance with all federal, state and local laws governing the safety and maintenance of the property, including the control of noxious weeds within the Conservancy Area.

 h. There shall be no operation of any motorized watercraft, vehicle, or equipment within the Conservancy Area.

 i. VEGETATION. Except in conjunction with the authorized uses set forth in paragraph g. above, there shall be no removal, cutting, mowing or alteration of any vegetation or change in the natural habitat in any manner.

The project manager should insert the file number.

 NOTWITHSTANDING the foregoing restrictions, the Covenantor may construct and maintain any project features or mitigation features expressly required by Corps permit number (Enter Corps Project ID).

 **RESERVED RIGHTS**

 These covenants do not authorize entry upon or use of the Conservancy Area by the general public.

 The Coventor and their invitees may hunt and fish in the Conservancy Area so long as they comply with all federal, state and local game and fishery regulations.

 Nothing herein shall be construed as limiting the right of the Covenantor to sell, give or otherwise convey the Conservancy Area, or any portion or portions thereof, provided that the con­veyance is subject to the terms of these Cove­nants.

 **GENERAL PROVISIONS**

 These Covenants shall run with and burden the Conservancy Area in perpetuity and shall bind the Covenantor and Covenantor's heirs, successors and assigns. These Covenants are fully valid and enforceable by any assignee of the Government, whether assigned in whole or in part. Said assignment may be by operation of law or by written notice of assignment to the Covenantor.

 The Covenantor warrants that he/she/it owns the Conservancy Area in fee simple, and that Covenantor either owns all property interests in the Conservancy Area which may be impaired by the granting of these Covenants or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Conservancy Area which have not been expressly subordinated to these Covenants by signing below. If it is determined at any time that there is any party who may have a property interest in the Conservancy Area that is superior to these Covenants, then the Covenantor shall immediately obtain and record a consent and subordination agreement signed by the other party. Acceptance of these Covenants does not release the Covenantor from the obligation to obtain and record a consent and subordination agreement signed by any party who may have a property interest in the Conservancy Area that is superior to these Covenants, even if such interest was of record at time of acceptance.

 The Covenantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Conservancy Area.

 The Covenantor agrees that the terms, conditions, covenants and restrictions set forth in this instrument will be inserted in any subsequent conveyance of any interest in said property. The Covenantor agrees to notify the Government of any such conveyance in writing and by certified mail within 15 days after the convey­ance.

 The Government may assign or transfer the right to enforce these Covenants to any Federal or state agency or private conservation organization for manage­ment and enforcement.

 The terms "Covenantor" and "Government" as used herein shall be deemed to include, respectively, the Covenantor and his/her/its heirs, successors, personal representatives, executors and assigns, and the United States Government, acting by and through the U.S. Army Corps of Engineers, and its assigns.

 TO HAVE AND TO HOLD the above described together with all the appurtenances, rights and privileges belonging thereto, either in law or equity, for the proper use and benefit of the Government and its successors and assigns, forever.

  **EXECUTIONS AND ACKNOWLEDGMENTS**

 IN WITNESS THEREOF, the Covenantor has hereto set their hand and seal this \_\_\_\_\_\_\_ day of (Month), (Year).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

)

State of Iowa, Illinois, Missouri )

This instrument was acknowledged before me this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name(s) with marital status).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[SEAL] Notary Public

My Commission Expires:\_\_\_\_\_\_\_\_

 **CONSENT AND SUBORDINATION**

 The undersigned consent and subordinate to the foregoing Creation and Grant of Covenants for the Conservancy Area.

SIGNATURE OF MORTGAGEE, IF ANY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Mortgagee)

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

)

State of Iowa, Illinois, Missouri )

This instrument was acknowledged before me this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[SEAL] Notary Public

My Commission Expires:\_\_\_\_\_\_\_\_

SIGNATURE OF HOLDER OF OTHER

INTEREST IN REAL PROPERTY, IF ANY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

)

State of Iowa, Illinois, Missouri )

This instrument was acknowledged before me this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_ , by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name(s) with marital status).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[SEAL] Notary Public

My Commission Expires:\_\_\_\_\_\_\_\_

 IF THERE ARE ADDITIONAL HOLDERS OF INTERESTS IN THE REAL PROPERTY, CHECK HERE [ ] AND ATTACH ADDITIONAL SIGNATURE PAGES FOR THEIR CONSENT AND SUBORDINATION

This instrument was drafted by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

using a form developed by the

Rock Island District, U. S. Army

Corps of Engineers