

USA07DEE

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	U.S. ARMY CORPS OF ENGINEERS
PROJECT/SUBDIVISION:	PERPETUITY OF DEED RESTRICTIONS IN MITIGATION AREA – PERMIT #200675511 ALONG COLORADO RIVER
TAX PARCEL NO:	2945-093-00-945
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2007
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

WHEN RECORDED RETURN TO:

Colorado/Gunnison Basin Regulatory Office
Attention: Steve Moore
U.S. Army Corps of Engineers, Sacramento District
400 Rood Avenue, Room 142
Grand Junction, Colorado 81521-2563

THIS SPACE FOR RECORDER'S USE ONLY

Deed Restrictions

THIS DECLARATION OF DEED RESTRICTIONS ("Declaration") is made as of MARCH 15, 2007, by the City of Grand Junction, a Colorado municipal corporation ("Declarant").

The Declarant is the owner of certain real property located in the City of Grand Junction, Mesa County, Colorado, described (by legal description) in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter "Mitigation Area").

The Declarant intends that the Mitigation Area be held in perpetuity subject to restrictions in accordance with the provisions of the Section 404 Permit #200675511, issued to Declarant by the U.S. Army Corps of Engineers.

This Declaration of Restrictions is intended to implement the provisions of the Permit requiring a binding covenant running with the land, but shall not be construed to impose restrictions in addition to those provided for in the Permit.

The Mitigation Area consists of both jurisdictional wetland features and associated natural upland areas and accordingly, the Declaration will benefit all parties to the Declaration in that it will assist in preserving and maintaining the Mitigation Area.

NOW THEREFORE, Declarant declares as follows:

1. Covenant Running with Land. The areas shown on the attached (plat, exhibit, etc. - identified by title, date and recording data) Exhibit B as *mitigation area* shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on the Mitigation Area:

- a. fill, grade, excavate or perform any other land disturbing activities
- b. cut, mow, burn, remove or harm any vegetation, except undesirable and/or noxious species such as tamarisk
- c. construct or place any roads, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures
- d. drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area
- e. dump or store soil, trash or other waste
- f. graze or water animals or use for any agricultural or horticultural purpose

Restrictions Concerning the Mitigation Area. Except for those actions necessary to accomplish preservation, maintenance, repair, fire prevention, or enhancement as has been, or in the future is authorized by the Corps, consistent with the Permit and The Plan, no person shall engage in any of the following restricted activities in the Preserve Area:

- (a) No plowing or cultivation of the Mitigation Area or any portion of such area, and no destruction or removal of any natural tree, shrub or other vegetation that exists upon the Mitigation Area shall be done or permitted except by the Declarant or its successors and assigns to the Mitigation Area, as described in The Plan and in consultation with the Corps, for the purpose of thatch management or the removal/management of newly introduced noxious or dangerous plants as necessary to maintain the Mitigation Area;
- (b) No materials or debris shall be stored or placed (whether temporarily or permanently) within the Mitigation Area or any portion of such area without prior written approval by the Corps;
- (c) No discharge of any dredged or fill material shall be done or permitted within the Mitigation Area or any portion of such area except as consistent with the terms and conditions of the Permit;

This covenant is intended to ensure continued compliance with the mitigation condition and plan of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Sacramento District, Permit Number 200675511 and therefore may be enforced by the United States of America.

2. Not An Offer to Dedicate: No Rights of Public Use. The provisions of this Declaration of Restrictions do not constitute an offer for additional public use or separate dedication. This instrument does not constitute an irrevocable offer to dedicate the Mitigation Area for public access or public use.

3. Successors and Assign Bound. Declarant hereby agrees and acknowledges that the Mitigation Area shall be held, sold, conveyed, owned and used subject to the applicable terms, conditions and obligations imposed by this Agreement relating to the use, repair, maintenance and/or improvement of the Mitigation Area, and matters incidental thereto. Such terms, conditions and obligations are a burden and restriction on the use of the Mitigation Area, as applicable.

The provisions of this Agreement shall (subject to the limitations contained in this Agreement and without modifying the provisions of this Agreement) be enforceable as equitable servitudes and conditions, restrictions and covenants running with the land, and shall be binding on the Declarant and upon each and all of its respective heirs, devisees, successors, and assigns, officers, directors, employees, agents, representatives, executors, trustees, successor trustees, beneficiaries and administrators, and upon future owners of the Mitigation Area and each of them.

5. Severability. The provisions of the Declaration are severable and the violation of any of the provisions of this Declaration by a Court shall not affect any of the other provisions which shall remain in full force and effect.

DECLARANT:

The City of Grand Junction
David Varley CITY MANAGER
a Colorado municipal corporation

Date: 15 March 2007

By: David A. Varley

Its City Manager

STATE OF COLORADO)
) ss.
County of Mesa)

On March 15, _____, 2007, before me, David A. Varley, City Manager for the City of Grand Junction, Colorado, personally known to me, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires
06/30/2010

Susan Mueller
Signature of Notary Public



**EXHIBIT A – LEGAL DESCRIPTION OF REAL PROPERTY AND
LEGAL DESCRIPTION OF “PRESERVE AREA”**

EXHIBIT B – MAP OF “PRESERVE AREA”

EXHIBIT "A"
PRESERVE AREA

A certain parcel of land located in Southeast Quarter of the Northeast Quarter (SE 1/4 NE 1/4) of Section 8, Township 1 South, Range 1 West, of the Ute Principal Meridian, County of Mesa, State of Colorado, being a portion of that certain parcel of land recorded in Book 1288, Page 175 of the Mesa County, Colorado public records and being more particularly described as follows:

Beginning at the Northeast corner of the SE 1/4 NE 1/4 of said Section 8 and assuming the East line of the SE 1/4 NE 1/4 of said Section 8 to bear S00°10'57"E with all bearings contained herein relative thereto; thence S00°10'57"E along the East line of the SE 1/4 NE 1/4 of said Section 8 a distance of 1003.20 feet; thence S50°18'45"W a distance of 163.76 feet to the North bank of the Colorado River; thence along the North bank of the Colorado River the following four (4) courses: (1) N29°01'06"W a distance of 183.39 feet; (2) thence N32°57'06" a distance of 265.00 feet; (3) thence N41°21'06"W a distance of 137.00 feet; (4) thence N32°43'15"W a distance of 514.21 feet; thence N00°11'06"W leaving the North bank of the Colorado River a distance of 190.23 feet to a point on the North line of the SE 1/4 NE 1/4 of said Section 8; thence S89°56'57"E along the North line of the SE 1/4 NE 1/4 of said Section 8 a distance of 725.01 feet to the Point of Beginning.

Said parcel contains 11.88 acres, more or less, as described.

