

## CONSERVATION EASEMENT

**THIS DEED OF CONSERVATION EASEMENT** is given this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_, having an address of \_\_\_\_\_ ("Grantor") to \_\_\_\_\_, having an address of \_\_\_\_\_ ("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 \_\_\_\_\_ County, KANSAS, more particularly described in Exhibit A, attached hereto and incorporated herein ("Property"), and

**WHEREAS**, Grantor and Grantee have previously entered into an Agreement whereby Grantee will construct on the Property a water retention structure identified in Grantee's General Plan as \_\_\_\_\_; and

**WHEREAS**, as a precondition to the construction of such structure, Grantee is required to obtain from the U.S. Army Corps of Engineers ("Corps") a Section 404 Permit, identified as Department Permit No \_\_\_\_\_ (the "Permit"); and

**WHEREAS**, the permits require that Grantee preserve, enhance, restore, or mitigate wetlands or uplands located on the Property, and

**WHEREAS**, in consideration of the issuance of the Permit to construct and operate such structure, and as an inducement to Grantee to construct such structure, Grantor is willing to grant a Conservation Easement for the preservation and maintenance of the riparian corridor located on the Property.

**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, agricultural, 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, or created shall be retained and maintained in the restored, enhanced, or created condition.

2. **Rights of Grantee:** The following rights are conveyed to Grantee and 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, maintenance, and monitoring activities, or surface water management improvements, the following activities are prohibited on the Property:

- a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground, or the construction or placing of structures below the ground that may impact the surface of the Property;
- 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, and except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by Grantee;
- 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;

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 Grantee's sole expense, operate, maintain and keep up the Property consistent with the purpose of this Conservation Easement. Grantee 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.

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, Grantee 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 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:** Grantee shall record this Conservation Easement in the official records of \_\_\_\_\_ County, KANSAS, and shall re-record it at any time to preserve their rights. Grantee shall pay all recording costs, fees and taxes necessary at any time

to re-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 \_\_\_\_\_ 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. 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 this Conservation Easement or to the vegetative and hydrologic condition required by the Permits.

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 invalidate any such 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 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 \_\_\_\_\_ 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. Specifically, although this easement is granted in perpetuity, should the impact on the woodland, wetland, or stream ecosystems which required this mitigation and thus this easement be eliminated, the easement may be revoked *if* approval is provided in writing from the Corps. Such authorization must be received prior to extinguishment and will occur at the discretion of the Corps after verification that the restoration is complete. 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 \_\_\_\_\_ County, KANSAS, within 30 days thereafter.

**TO HAVE AND TO HOLD** unto Grantee forever. The covenants, terms, conditions, restrictions, and purpose imposed with this Conservation Easement shall be binding upon Grantor and Grantee and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the property.

**GRANTOR FURTHER COVENANTS** that Grantor is lawfully seized 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 may negatively affect this easement; 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 all 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.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Grantor(s): \_\_\_\_\_

\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF

COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, before me, the undersigned, a Notary Public in and for said State personally appeared \_\_\_\_\_, know or proved to me to be the person(s) described in and who executed the foregoing instrument, and acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

\_\_\_\_\_

**ACCEPTANCE BY GRANTEE:**

I \_\_\_\_\_ (name), \_\_\_\_\_ (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 \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_

Title