

## DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“**Easement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_ and \_\_\_\_\_, having an address at \_\_\_\_\_ (“**Grantors**”), in favor of Kansas Land Trust, Inc., a non-profit Kansas corporation qualified to do business in Kansas, having an address at 16 East 13th Street, Lawrence, KS 66044 (“**Grantee**”) and the United States of America (“**United States**”), acting by and through the United States Army (“**Army**”).

### WITNESSETH:

WHEREAS, Grantors are the sole owners in fee simple of certain real property, consisting of \_\_\_\_ total acres, more or less, in \_\_\_\_\_ County, Kansas (the “**Protected Property**”), with a legal description attached hereto as Exhibit A (“**Exhibit A**”), and incorporated by this reference;

WHEREAS, this property is further depicted in the aerial photograph and map (“**Aerial Photograph and Map**”), attached hereto as Exhibit B (“**Exhibit B**”), and incorporated by this reference, which identifies approximately \_\_\_\_ acres of cropland and forages (“**Cropland**”); approximately \_\_\_\_ acres of trees and riparian area (“**Riparian Area**”); approximately XX acres of XXX (“**XXX**”); and approximately XX agricultural structures (“**Agricultural Structures**”) designated in Section 4.7 below;

WHEREAS, the Grantors and Grantee have prepared and signed an Easement Baseline Documentation Report (“**Baseline Documentation Report**”), which is on file at the offices of Grantee and is summarized in Exhibit C (“**Exhibit C**”), attached hereto and made a part hereof, which consists of maps, photographs, species list, reports, and other documentation that the parties agree provide, collectively, an accurate representation of the specific Conservation Values, as defined below, of the Protected Property as of the date of this Easement and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement;

WHEREAS, as of the date of this Easement, the Cropland, Riparian, and \_\_\_\_\_ areas of the Protected Property possess natural resource conservation values associated with the protection of farming and ranching, ecological diversity, wildlife habitat, watersheds and waterways, scenic open spaces, and undeveloped recreation (collectively, “**Conservation Values**”) of great importance to the people of Kansas, the Grantors, the Grantee, and the people of the United States, the conservation of which will provide a significant public benefit;

WHEREAS, \_\_\_\_% (\_\_\_\_ acres) of the Protected Property contains soils of statewide importance, as designated by the State of Kansas with concurrence from the United States Department of Agriculture, Natural Resources Conservation Service, and approximately \_\_\_\_% (\_\_\_\_ acres) is designated prime farmland, as documented in the Baseline Documentation Report;

WHEREAS, Grantors intend that the Conservation Values of the Protected Property be conserved and maintained by permitting only those land uses on the Protected Property that do not significantly impair or interfere with the Conservation Values, which include land uses relating to farming and ranching, as limited under this Easement;

WHEREAS, Grantors further intend, as owners of the Protected Property, to convey to Grantee the right to conserve and protect the Conservation Values of the Protected Property in perpetuity;

WHEREAS, the Grantee is a publicly supported, tax-exempt non-profit organization, qualified under Section 501(c)(3) and 170(h), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated there under (the “**Internal Revenue Code**”), whose primary purpose is the protection and conservation of lands of ecological, scenic, historic, agricultural, or recreational significance in Kansas;

WHEREAS, this property interest has been acquired with assistance from the Army in furtherance of a Cooperative Agreement No. W911SR-06-2-005 between the Army and the Grantee. Fort Riley Military Installation (“**Fort Riley**”) has an active Army Compatible Use Buffer program to discourage incompatible development of surrounding properties for residential, commercial, or industrial uses which could adversely affect the military mission, long-term sustainability, and viability of Fort Riley. This Easement limits uses of the property to those consistent with the purposes of that Cooperative Agreement and the conservation and protection of the Conservation Values, defined above and documented further in the Baseline Documentation Report. This deed contains third party rights for the United States, acting by and through the Army, to exercise should the property be used in a manner inconsistent with the purposes, terms and conditions of this Easement; and

WHEREAS, Grantee agrees by accepting this Easement to honor the intentions of Grantors stated herein and to conserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

NOW, THEREFORE, for \_\_\_\_\_ and no/100 Dollars (\$\_\_\_\_\_) in consideration paid to the Grantors and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Kansas and in particular the Kansas Uniform Conservation Easement Act, Kansas Statutes Annotated 58-3810 et seq., and the laws of the United States, the Grantors hereby voluntarily grant and convey to Grantee this Easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

**1. PURPOSE.** All of the above recitals of fact are incorporated herein as if fully set forth. It is the purpose of this Easement to protect the Cropland and XXX areas that include prime farmland soils and agricultural soils of statewide importance and the agricultural viability and general productive capacity of the Protected Property in perpetuity. It is also the purpose of this Easement to assure that the Protected Property will be retained forever predominantly in its agricultural, ecological, scenic, and open space condition and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected

Property. Grantors intend that this Easement will confine the use of the Protected Property to such activities, including, those involving farming and ranching; open space and scenic appreciation; public education; undeveloped recreation; and ecological diversity, wildlife habitat, riparian buffer, and watershed protection and restoration that are conducted consistent with the purposes of this Easement.

**2. RIGHTS OF GRANTEE.** To accomplish the purposes of this Easement the following rights are conveyed to Grantee by this Easement:

- (a) To conserve and protect the Conservation Values of the Protected Property;
- (b) To enter upon the Protected Property annually at reasonable times in order to monitor Grantors' compliance with the terms of this Easement in accordance with Section 6. Except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of the Easement, such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not in any case unreasonably interfere with Grantors' use and quiet enjoyment of the Protected Property;
- (c) To prevent any activity on or use of the Protected Property that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 6; and
- (d) To enter onto the Protected Property, in accordance with Section 7, for special access for educational purposes; and
- (e) Install and display a sign on the Protected Property stating that the Grantee has acquired certain rights to conserve the Protected Property in perpetuity.

**3. PROHIBITED USES/RESTRICTIONS.** Any activity on or use of the Protected Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

**3.1 Structures.** There shall be no construction or placing of any Structure (defined hereafter) on the Protected Property, except as allowed in Section 4.7. The term "**Structure**" includes, but is not limited to, a house, garage, barn or other building, recreational courts or playing fields, landing strip, mobile home, swimming pool, asphalt, concrete or asphalt pavement, billboard, sign, antenna, storage tank, utility poles, utility lines, utility system, tower, lights, commercial wind turbines, and any other temporary or permanent improvement of a similar nature or with similar characteristics.

**3.2 Subdivision.** The Protected Property may not be divided, partitioned, subdivided, or conveyed except in its current configuration as a single unit.

**3.3 Mining.** There shall be no hard rock, sand, gravel, or soil mining on the Protected Property.

**3.4 Minerals and Gas.** There shall be no exploration for, development of or extraction of minerals, gas, or hydrocarbons on the Protected Property.

**3.5 Water.** Grantors shall not transfer, encumber, lease, sell, or otherwise separate from title to the Protected Property any water rights necessary for the present or future agricultural production.

**3.6 Watershed and Wetlands.** Except as specified below, and subject to the limitations set forth in this Easement, the Grantors may not alter water sources, water courses, water bodies, or the natural flow of water over or within the Protected Property. Draining, filling, dredging, diking or any other alteration is prohibited in any wetland areas. The continued use, maintenance, repair, and reasonable improvement (not including enlargement) of existing ponds, reservoirs, and conservation structures (e.g., agricultural terraces, water ways, livestock crossings) is permitted without notice to the Grantee. Neither the establishment, construction, or enlargement of ponds and reservoirs nor the alteration of streams or stream banks is permitted without the prior written consent of Grantee pursuant to Sections 5.1 and 5.2 of this Easement, which approval shall not be unreasonably denied so long as the following conditions are met:

- (a) carried out in accordance with law and regulations,
- (b) consistent with the Conservation Values of this Easement,
- (c) designed and implemented in a manner that does not adversely affect water quality or quantity, or existing aquatic species' habitats; and
- (d) shall further the uses permitted by the following Sections of this Easement:
  - a. Section 4.11 for the purpose of permitted restoration activities, or
  - b. Section 4.12 for the purpose of permitted agricultural uses, in order to:
    - i. improve drainage of agricultural soils or reduce soil erosion,
    - ii. benefit grazing, provided that it is necessary to meet livestock watering needs and the size does not significantly exceed the need for livestock watering purposes,
    - iii. benefit prairie management, or
    - iv. otherwise improve the agricultural management of the Protected Property.

**3.7 Topography.** Except as specified below, and subject to the limitations set forth in this Easement, the Grantors shall not ditch, drain, dike, fill, excavate, extract, or remove topsoil, sod, sand, gravel, rock, or other materials; or otherwise change the topography of the Protected Property in any manner. The continued use, maintenance, repair, and reasonable improvement (not including enlargement) of conservation structures (e.g., agricultural terraces, water ways, and livestock crossings) are permitted without notice to the Grantee. Other alteration of topography is not permitted without the prior written consent of Grantee pursuant to Sections 5.1 and 5.2 of this Easement, and provided that any such alterations are subject to the following conditions:

- (a) carried out in accordance with law and regulations,
- (b) consistent with the Conservation Values of this Easement,
- (c) designed and implemented in a manner that does not adversely affect water quality or quantity, or existing aquatic species' habitats; and
- (d) shall further the uses permitted by the following Sections of this Easement:
  - a. Section 3.6 for permitted or allowed watershed activities,
  - b. Section 4.11 for the purpose of permitted restoration activities, or
  - c. Section 4.12 for the purpose of permitted agricultural uses, in order to:
    - i. improve drainage of agricultural soils or reduce soil erosion,

- ii. benefit grazing or prairie management, or
- iii. otherwise improve the agricultural management of the Protected Property.

**3.8 Waste.** There shall be no storage, dumping or accumulation of trash, non-compostable garbage, hazardous or toxic substances or other substance or material on the Protected Property, except that certain hazardous or toxic substances and agricultural by-products may be stored on the Protected Property, as needed, in association with agricultural uses otherwise permitted in this Easement, so long as such storage is in accordance with all applicable laws and regulations.

**3.9 Roads.** There shall be no building of new roads involving excavation of the surface or establishment of other rights-of-way on the Protected Property, except for relocating pervious/unpaved field roads/trails as allowed in Section 4.5 and as necessary for agricultural operations on the Protected Property and consistent with the Conservation Values of this Easement. Impervious/paved roads are prohibited on the Protected Property.

**3.10 Timber Harvest.** There shall be no commercial timber harvest from the Protected Property.

**3.11 Spraying.** There shall be no use of pesticides (e.g., herbicides, insecticides, fungicides, rodenticides) on the Protected Property except as allowed in Section 4.13. Aerial spraying of pesticides shall not be permitted on the Protected Property.

**3.12 Reptiles and Amphibians.** There shall be no removal of native reptiles and amphibians from the Protected Property.

**3.13 Vehicles.** Except as provided in Section 4.6 of this Easement, vehicles shall not be operated on the Protected Property. The term “vehicles” includes but is not limited to cars, trucks, ATVs, snowmobiles, dune buggies, motorcycles and recreational vehicles. All vehicles permitted in Section 4.6 shall be used in a manner that does not significantly impact the Conservation Values of the Protected Property.

**3.14 Commercial Activities.** Commercial activities other than farming and ranching shall not be permitted on the Protected Property either by Grantors; Grantors’ invitees, licensees, or agents; or Grantors’ successors and assigns. Commercial recreational activities, other than undeveloped recreation allowed in Section 4.10 below, are prohibited.

**3.15 Impervious Surfaces.** Impervious surfaces (“**Impervious Surfaces**”) are not permitted without the prior written consent of Grantee pursuant to Sections 5.1 and 5.2 of this Easement. Impervious Surfaces are defined as structures or improvements that permanently cover soil resources. Impervious Surfaces do not include permeable surfaces such as gravel roads, structures whose principal purpose is to protect soil and water resources, and structures and improvements lacking permanent foundations.

**3.16 Commercial Feedlots.** The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Easement, “commercial feedlot” is defined as a

permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock. Nothing in this section shall prevent Grantors from seasonally confining Grantors' livestock into an area for feeding or from leasing pasture for the grazing of livestock owned by others in a manner consistent with generally accepted Best Management Practices (“BMPs”), as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner neither wasteful of soil resources nor detrimental to water quality and the conservation values of this Easement.

**4. GRANTORS' RESERVED RIGHTS.** Grantors reserve to themselves, and their successors and assigns, all rights accruing from their ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

**4.1 Conveyance.** Grantors may sell, give, mortgage, lease or otherwise convey the Property, provided that such conveyance is subject to this Easement and written notice is provided to the Grantee in accordance with Section 13 below.

**4.2 Timber and Riparian Buffer.** Subject to the limitations in this Section, cutting of trees and woody shrubs may be accomplished to maintain the character of the Protected Property, to maintain fences, and to prevent invasion of woody plants. Trees cut for authorized purposes may be utilized for personal use as firewood. In order to protect the ecological integrity and water quality of the water resources, Grantor agrees to maintain a vegetated riparian buffer (“**Riparian Buffer**”) which shall contain the land extending at least 66 feet from the bank of the stream identified in the Riparian Area of the Protected Property, as shown in Exhibit A and described and depicted graphically in the Baseline Report. Grantor agrees that the Riparian Buffer shall be maintained with vegetative cover including trees, shrubs, or grasses. Plowing or other soil disturbance is prohibited within the buffer. Timber management (e.g., prevention of invasion of woody plants, control of non-native vegetation, removal of diseased trees) is permissible in a manner consistent with generally accepted BMPs, as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner neither wasteful of soil resources nor detrimental to water quality and the Conservation Values of this Easement.

**4.3 Fences.** Grantors shall be responsible for complying with Kansas fence laws. Grantors may repair, replace, maintain, improve, remove, or construct fencing as necessary to secure the Protected Property and for agricultural operations on the Protected Property, including customary management of livestock. Existing stone fences must be protected and shall not be removed without prior approval of Grantee.

**4.4 Signs.** Grantors may place on the Protected Property interpretive signs (e.g., identifying that the Protected Property is protected by this Easement, identifying prairie habitat improvements, stating “no hunting” or “no trespassing”).

**4.5 Roads.** Existing field roads/trails are identified in the Baseline Documentation Report and may be maintained and repaired. In order to prevent erosion and soil loss, Grantors may relocate existing pervious field roads/trails on the Protected Property, provided their total number and cumulative length does not increase and the disturbance to native plant species and soils is minimized. Abandoned roads shall be returned to native vegetation cover, either by letting natural succession occur or by replanting with appropriate, native species (based on soil type) using local ecotypes. Existing driveways may be maintained and repaired and driveways for access to any new structure within the Building Site Envelope defined in Section 4.7 below may be constructed.

**4.6 Vehicles.** Motorized vehicles may be operated on the Protected Property as necessary to carry out agricultural activities like maintaining fences, removing trees and shrubs, and burning in order to maintain the character of the Protected Property as is permitted under this Easement. In addition, limited vehicle use necessary to transport educational groups with special needs for permitted educational activities is also permitted. Use of vehicles should be limited to existing field roads whenever feasible, and be done in a manner that will minimize impact on the Conservation Values. In those cases where permitted vehicle use must be conducted off road in order to conduct the uses permitted under this Easement, then off road use shall be confined to a few field trails. In all cases, vehicle use must be conducted in a manner that does not significantly impact the Conservation Values, including protection of the soils.

#### **4.7 Structures**

**(a) Building Site Envelope.** The existing residential dwelling located in the Building Site Envelope that is a maximum of \_\_\_ acres identified on Exhibit B and in the Baseline Documentation Report, may be removed, maintained, repaired, renovated, and reasonably enlarged or replaced within the Building Site Envelope, only as provided for in this Section. No additional residential dwelling may be built anywhere on the Protected Property. Customary residential appurtenances and non-habitable accessory structures (e.g. storage shed, garage) may be maintained, repaired, renovated, reasonably enlarged or replaced, removed, and built within the Building Site Envelope, only as provided for in this Section. All other construction, erection, installation, or placement of structures, buildings, or other improvements is prohibited unless such structures or improvements are permitted elsewhere in this Easement.

**(b) Agricultural Structures.** All existing agricultural structures (e.g. \_\_\_\_\_, \_\_\_\_\_) in the Building Site Envelope that is a maximum of \_ acres as identified on Exhibit B and in the Baseline Documentation Report may be removed, maintained, repaired, renovated, enlarged, and replaced at their current location, as identified on Exhibit B and indicated in the Baseline Documentation Report, only as provided for in this Section. New agricultural structures or improvements, to be used solely for the purpose of permitted agricultural use pursuant to Section 4.12 on the Protected Property, may be constructed without the permission of the Grantee, and shall only be constructed within the Building Site Envelope that is a maximum of 5 acres identified on Exhibit B and in the Baseline Documentation Report.

**(c) Other Agricultural Improvements.** For purposes of this Section, “other improvements” shall not refer to irrigation or watering improvements necessary or desirable for agricultural or

horticultural purposes in the Cropland area or Building Site Envelope (e.g. irrigation or watering systems, including water pipe, lines, wells, and related utilities), nor shall it refer to trees, vines, or other landscaping, seeding, or gardens planted in the Cropland area or Building Site Envelope for horticultural or agricultural purposes; all of which may be made without the permission of the Grantee.

**4.8 Utilities.** Grantors may install utilities necessary within the Building Site Envelope or Cropland for permitted uses of the Protected Property as long as such installation is not inconsistent with the purposes of this Easement and is done in such a manner as to minimize to the greatest extent possible impact on soils. Existing utilities may be replaced or repaired at their current location.

**4.9. Native Species.** Grantors may undertake to restore and/or enhance the native plant and animal communities on the Protected Property to the extent consistent with the other terms of this Easement.

**4.10. Undeveloped Recreation.** Grantors, Grantors' invitees and licensees, or Grantors' successors and assigns may undertake undeveloped recreation activities (e.g., camping, hiking, hunting, fishing) on the Protected Property in compliance with all state and federal laws and regulations and subject to the limitations set forth in this Easement. For the purposes of this Section, "undeveloped" means temporary improvements without foundations relating to the uses allowed in this Section (e.g., hunting blinds, camping sites).

**4.11 Restoration.** Cutting and burning of trees, prairie grasses, and woody shrubs may be accomplished to restore and maintain the character of the Protected Property, to maintain fences, and to prevent invasion of woody plants. The Cropland can be managed as cropland or it can be restored to prairie, woodlands, wetlands, or other habitats. Trees can be managed as forest or can be restored, unless identified as a native forest, to prairie, wetlands, or other habitats. Trees cut for authorized purposes may be utilized for non-commercial use.

**4.12 Agriculture.** Grantors may engage in agricultural management, uses, and activities, including farming and ranching, subject to the limitations set forth in this Easement. Agricultural management, uses, and activities on the Protected Property shall be in a manner consistent with generally accepted BMPs, as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner neither wasteful of soil resources nor detrimental to water quality and the Conservation Values of this Easement.

**4.13 Spraying.** Pesticides may be used in the Cropland area for agricultural purposes, the control of state-designated noxious weeds, and/or for the control of other invasive plant species. The use of pesticides shall be managed to:

- (a) minimize the impact on water quality and the plant diversity of native species;
- (b) limit to those amounts and frequency of application that constitute the minimum necessary for control of the targeted pest;
- (c) comply with all product labels, governmental regulations, and applicable law;
- (d) be consistent with BMPs, as those practices may be identified from time to time by appropriate governmental or educational institutions.



**4.14 Educational Activity.** Undeveloped, non-commercial educational activity is permitted as long as such activity is consistent with the Conservation Values expressed in this Easement and does not adversely impact the soils or agricultural operations on the Protected Property. Grantors may make the Protected Property accessible to the public to enjoy the ecological, open space, aesthetic and conservation benefits of this Easement and to learn about the benefits of conservation easements in general. In order to protect the Conservation Values for which this Easement is granted, Grantors agree to consult with Grantee before opening the land to public access or use.

## **5. NOTICE AND APPROVAL.**

**5.1 Notice of Intention to Undertake Certain Permitted and Previously Unspecified Actions.** Grantors agree to notify Grantee and a designated Army official at Fort Riley prior to undertaking any activity not specified in Sections 3 and 4 that may have a material adverse impact on the Conservation Values of the Protected Property. Whenever any other notice is required under this Easement, Grantors shall notify Grantee in writing not less than sixty (60) days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment whether to approve the activity based on its consistency with the purposes of this Easement.

**5.2 Grantee's Approval.** Where notice to the Grantee is required as set forth in Section 5.1 or any other notice as required under this Easement, Grantee, after coordination with a designated Army official at Fort Riley, shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantors' written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Easement.

**5.3 Mediation.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purposes of this Easement, either party may refer the dispute to mediation by request made in writing to the other. Upon such a request by Grantee, Grantors agree that, pending resolution of the dispute, Grantors shall not proceed with the planned activity. Within ten (10) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, each appoint a person to act as a mediator. These two persons shall select a third person, and that person shall mediate the dispute subject to the following guidelines:

- (a) Purpose. The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation shall not result in any express or de facto modification or amendment of the terms, conditions, or restriction of this Easement; and,
- (b) Participation. The mediator may meet with the parties and their counsel jointly or individually. The parties agree that they will participate in the mediation process in good

faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator; and,

- (c) Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party; and,
- (d) Time Period. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute; and,
- (e) Costs. The costs of the mediator shall be borne equally by Grantors and Grantee; the parties shall bear their own expenses, including attorneys' fees, individually. If the United States exercises its rights under this Easement, this Section 5.3, shall only apply if both the United States and Grantors mutually agree to mediation.

## **6. GRANTEE'S REMEDIES.**

**6.1 Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

**6.2 Injunctive Relief.** If Grantors fail to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction. to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction (*ex parte* as necessary), and to require the restoration of the Protected Property to the condition that existed as of the date of this Easement.

**6.3 Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantors' liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

**6.4 Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this Section 6 without prior notice to Grantors or without waiting for the period provided for cure to expire.

**6.5 Scope of Relief.** Grantee's rights under this Section 6 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantors agree that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 6.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**6.6 Cost of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs and expenses of litigation, including expert witness fees and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs.

**6.7 Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

**6.8 Waiver of Certain Defenses.** Grantors hereby waive any defense of laches, estoppel, or prescription.

**6.9 Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Protected Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Before taking such emergency action, however, Grantors shall notify Grantee by the best means practicable.

**7. ACCESS.** No right of access by the general public to any portion of the Protected Property is conveyed by this Easement; however, with prior arrangements and approval by the Grantors, the Grantee may conduct occasional educational nature walks for its members and others. The Grantee is assured that special access for educational purposes will be provided at least once annually.

## **8. COSTS, LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE.**

**8.1 Costs, Legal Requirements, and Liabilities.** Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep,

and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement, and all such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantors shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

**8.2 Taxes.** Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively “**taxes**”), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

**8.3 Representation and Warranties.** Grantors represent and warrant that, after reasonable investigation and to the best of their knowledge:

- (a) No substance defined, listed, or otherwise classified pursuant to any environmental act as solid, hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Protected Property; and,
- (b) There are not now any underground storage tanks located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Protected Property; and,
- (c) Grantors and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use; and,
- (d) Grantors warrant that they are in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantors warrant that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Environmental Laws or an Environmental Law means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect; and,
- (e) Grantors warrant they have no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property exceeding regulatory limits. Hazardous Materials or a Hazardous Material means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious

materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment; and,

- (f) There is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property; and,
- (g) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Protected Property or its use, nor do there exist any facts or circumstances that Grantors might reasonably expect to form the basis for any such proceeding, investigations, notices, claims, demands, or orders; and,
- (h) Grantors hereby warrant and represent that the Grantors are seized of the Protected Property in fee simple and have good right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances and that Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

**8.4 Removal and Remediation.** If, at any time, there occurs, or has occurred, a release, threatened release, or presence in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any environmental act as solid, hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantors agree to take all steps necessary to assure its containment and/or removal and remediation, including any cleanup that may be required. Moreover, Grantors hereby promise to indemnify and hold harmless the United States, the Army, and the Grantee against all costs, litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantors or any other prior owner of the Protected Property. Notwithstanding the foregoing, in no event shall Grantors be obligated to indemnify or hold harmless the Army in the event that any release or threatened release of any Hazardous Materials is caused by or arises out of the acts or omissions of the Army. Grantors' indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantors with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

**8.5 Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee or the United States to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantors' activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of any environmental act.

**8.6 Hold Harmless.** Grantors hereby release and agree to hold harmless, indemnify, and defend the Grantee and its members, directors, officers, employees, agents, and contractors and the successors and assigns of each of them and the United States and the Army (**collectively "Indemnified Parties"**) from and against any and all liabilities, penalties, fines, charges, costs,

losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, costs and expenses of litigation, including expert witness' fees and reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, unless due solely to the intentional action of any of the Indemnified Parties; (b) the violation or alleged violation of, or other failure to comply with, any environmental act, in any way affecting, involving, or relating to the Protected Property; (c) the violation or alleged violation of, or other failure to comply with this Easement; (d) the release, threatened release, or presence in, on, from, or about the Protected Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any environmental act as solid, hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment; (e) the obligations, covenants, representations, and warranties of Sections 8.1 through 8.5; and (f) enforcement of this indemnity clause by any Indemnified Party in an action in which the Indemnified Party prevails. Notwithstanding the foregoing, in no event shall Grantors be obligated to indemnify or hold harmless the Army in the event that any release or threatened release of any Hazardous Materials is caused by or arises out of the acts or omissions of the Army.

**8.7 “Environmental Act” Defined.** As used in this agreement, the term “environmental act” includes, but is not limited to, the Comprehensive Response, Compensation and Liability Act (CERCLA), the Resource, Conservation and Recovery Act (RCRA), or successor statutes to either, their state or local counterparts or any federal, state, or local enactment or regulation relating to the clean up, disposal or control of waste, or any other federal, state or local enactment or regulation relating to the protection of the environment, or the protection of natural resources such as air, water or soil or relating to the protection of human health and welfare. The term also includes any rule of common law, including but not limited to nuisance, relating to any of the above.

## **9. EXTINGUISHMENT AND CONDEMNATION.**

**9.1 Extinguishment.** If circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantors and Grantee agree that the terms of this Easement shall survive any merger of the fee and easement interests in the Protected Property. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with Section 9.2.

**9.2 Valuation.** This Easement constitutes a real property interest immediately vested in the Grantee, which, for the purposes of Section 9.1, the parties stipulate to have a fair market value determined by multiplying (a) the fair market value of the Protected Property unencumbered by the Easement (minus any increase in value after the date of the grant attributable to improvements) by (b) the ratio (x/y) of the value of the Easement at the time of

this grant (x) to the value of the Protected Property, without deduction for the value of the Easement, at the time of this grant (y). The values at the time of this grant shall be those values determined in an appraisal by a qualified appraiser utilizing the Uniform Appraisal Standards for Federal Land Acquisitions. For the purposes of this Section, the ratio of the value of the Easement to the value of the Protected Property unencumbered by the Easement shall remain constant.

**9.3 Condemnation.** Notice to and consent from the United States must occur prior to exercise of the power of eminent domain. If all or any part of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of the interests in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting there from. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Section 9.2.

**9.4 Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this Section 9 in a manner consistent with its conservation purposes, which are exemplified by this Easement.

**10. AMENDMENT.** If circumstances arise under which an amendment to or modification of this Easement would be consistent with the purposes of this Easement in the sole judgment of the Grantee and authorized officials of the Army at Fort Riley the parties may jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Kansas Statutes Annotated 58-3810 et seq. or Section 170(h) of the Internal Revenue Code, and any amendment shall be consistent with the purposes of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of \_\_\_\_\_ County, Kansas. Grantee must provide to the United States timely notice in writing of the amendment.

**11. SUBORDINATION.** At the time of conveyance of this Easement, the Protected Property is subject to a mortgage, the holder of which has agreed by separate agreement, a copy of which is attached hereto as **Exhibit D** and incorporated by reference herein, to subordinate the lender's rights in the Protected Property to the extent necessary to permit Grantee to enforce the purposes of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the mortgage holder.

**12. ASSIGNMENT.** This Easement is transferable, but upon prior written consent from an authorized official of the Army at Fort Riley, Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and the applicable regulations promulgated there under, and authorized to acquire and hold conservation easements under Kansas Statutes Annotated 58-3810 et seq. (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer,

Grantee shall require that the conservation purposes that this Easement is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantors of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

**13. EXECUTORY LIMITATION.** If Grantee shall cease to exist or to be a qualified organization under Section 170(h)(3) of the Internal Revenue Code, or to be authorized to acquire and hold conservation easements under Kansas statutes, and the Secretary of the Army (the “**Secretary**”) declines to exercise its rights as under this Easement, then Grantee's rights and obligations under this Easement shall become immediately vested in an organization mutually agreed upon by Grantors and Grantee which qualifies as an exempt organization under the provisions of Section 501 (c)3 of the Internal Revenue Code and which qualifies according to that organization's Articles of Incorporation, or such organization as a court of competent jurisdiction shall direct pursuant to applicable Kansas law and consistent with the requirements for an assignment pursuant to Section 12.

**14. SUBSEQUENT TRANSFERS.** Grantors agree to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantors to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

**15. ESTOPPEL CERTIFICATES.** Upon request by Grantors, Grantee shall within twenty (20) days execute and deliver to Grantors, or to any party designated by Grantors, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantors’ compliance with any obligation of Grantors contained in the Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantors request more current documentation, Grantee shall conduct an inspection, at Grantors’ expense, within thirty (30) days of receipt of Grantors’ written request therefore.

**16. NOTICES.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantee: Executive Director  
Kansas Land Trust, Inc.  
16 East 13<sup>th</sup> Street  
Lawrence, KS 66044-3502



To Designated Army  
Official at Fort Riley:

Partnership Biologist  
Directorate of Public Works  
Environmental Bldg. 407, Pershing Court  
Fort Riley, KS 66442

or to such other address as either party from time to time shall designate by written notice to the other.

**17. RECORDATION.** Grantee shall record this instrument in timely fashion in the official records of \_\_\_\_\_ County, Kansas, and may re-record it at any time as may be required to preserve its rights in this Easement.

**18. GENERAL PROVISIONS.**

**18.1 Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Kansas and the United States.

**18.2 Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purpose of Kansas Statutes Annotated 58-3810 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**18.3 Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**18.4 Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 10.

**18.5 No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.

**18.6 Joint Obligation.** The obligations imposed by this Easement upon Grantors shall be joint and several.

**18.7 Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon Grantors, and their successors and assigns, and inure to the benefit of the Grantee, and its successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property. The terms "Grantors" and "Grantee," wherever used herein, and any

pronouns used in place thereof, shall include, respectively, the above-named Grantors, and their successors and assigns, and the above-named Grantee, and its successors and assigns.

**18.8 Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in this Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**18.9 Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

**18.10 Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

## **19. RIGHTS OF THE UNITED STATES OF AMERICA.**

Under this Easement, the same rights are granted to the United States that are granted to the Grantee. However, the Secretary, on behalf of the United States will only exercise these rights under the following circumstances:

In the event that the Grantee fails to enforce any of the terms of this Easement, as determined at the sole discretion of the Secretary, the said Secretary, and his or her successors and assigns, shall have the right to enforce the terms of this Easement through any and all authorities available under Federal or State law. In the event that the Grantee attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this Easement or extinguish this Easement without the prior consent of the Secretary and, if applicable, payment of consideration to the United States, then, at the option of such Secretary, all right, title, and interest in this Easement shall become vested solely in the United States.

In the event the Secretary determines it must enforce the terms of this Easement due to the failure by Grantee to enforce said terms, the Secretary will first provide written notice by certified mail to Grantee at its last known address. The notice will set forth the nature of the non-compliance and provide for a 60-day period to cure. If Grantee fails to cure any non-compliance within said 60-day period, then the United States may enforce the terms of this Easement thorough any and all authorities available under Federal or State law. Additionally, if the Secretary determines imminent harm may result to the Protected Property, it may elect not to provide a period of time to cure in its written notice.

Any activity resulting in a violation of the terms of this Easement will be considered an activity with the potential to adversely affect the interests of Fort Riley. Pursuant to Section 2864a(d)(4) the Secretary shall have the rights to enforce the terms of this Easement or demand transfer of the Easement under the circumstances set forth above.

TO HAVE AND TO HOLD unto Grantee and the United States, and their successors and assigns forever.

IN WITNESS WHEREOF Grantors, Grantee, and the United States have set their hands on the day and year first above written.

Grantors:

by \_\_\_\_\_  
[Grantor's printed name]

by \_\_\_\_\_  
[Grantor's printed name]

STATE OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, ss:

This instrument was acknowledged before me on \_\_\_\_\_, 200\_\_, by [Grantors printed names], [husband and wife].

My commission expires:

\_\_\_\_\_  
Notary Public

**Grantee:**

**Kansas Land Trust, Inc.**

by \_\_\_\_\_  
Beverley Worster, its President

STATE OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, ss:

This instrument was acknowledged before me on \_\_\_\_\_, 200\_\_, by Beverley Worster, President of Kansas Land Trust, Inc., a non-profit Kansas corporation and Beverley Worster duly acknowledged the execution of the same as the act and deed of said corporation.

\_\_\_\_\_  
Notary Public

**ACCEPTANCE OF PROPERTY INTEREST BY THE UNITED STATES ARMY ON BEHALF OF THE UNITED STATES OF AMERICA**

The United States Army, an agency of the United States Government, hereby approves the foregoing Deed of Conservation Easement, and accepts the rights conveyed therein, on behalf of the United States of America.

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COL Kevin P. Brown, Garrison Commander, Fort Riley, KS  
Authorized Signatory for the U.S. Army

STATE OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, ss:

On this \_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned, a Notary Public in and for the State, personally appeared COL Kevin P. Brown, known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that he is the Colonel, US Army, Garrison Commander, of the United States Department of the Army, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to be his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

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Notary Public

## **SCHEDULE OF EXHIBITS**

A. Legal Description

B. Aerial Photograph and Map

C. Summary of Baseline Documentation Report