

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“**Easement**”) is made this ____ day of _____, 2010, 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 _____, a Kansas corporation qualified to do business in Kansas, having an address at _____, _____, KS _____ (“_____”);

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 native tallgrass prairie grassland (“**Native Prairie**”), approximately ____ acres of _____ (“_____”), and approximately ____ acres of wooded riparian buffer area (“**Riparian Buffer**”), as further described in Section 3.15 of this Easement;

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 Native Prairie, _____, and Riparian Buffer areas of the Protected Property possess natural resource conservation values associated with conservation of native prairie viability, productive capacity, and soil resources; protection of ecological diversity, wildlife habitat, and watersheds; and preservation and appreciation of scenic open space (collectively, “**Conservation Values**”) of great importance to the Grantor; the Grantee; and the people of _____ County, the State of Kansas, and 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, the Native Prairie, _____, and Riparian Buffer areas of the Protected Property contain important, diverse native flora and fauna, as recognized by the Kansas Biological Survey and identified in the Baseline Documentation Report, which are to be protected against invasive plant species and state-designated noxious weeds and conserved by this Easement;

WHEREAS, the Zoning Regulations of _____ County, Kansas, stated purposes include preserving, maintaining, and conserving agricultural land; encouraging and promoting agricultural development and productivity; and protecting agricultural land from the intrusion of uses which are incompatible, inconsistent, or which otherwise detract from, limit, restrict, or diminish agricultural productivity;

WHEREAS, Agricultural Districts established by the Zoning Regulations of _____ County, Kansas, within which the Protected Property is located, are intended to protect watersheds and water supplies; to protect the use of natural resources in the production of agricultural products and prevent and/or discourage their conversion to other uses not in the interests of the citizens of _____ County; to protect forest and scenic areas; to conserve fish and wildlife habitat; to promote forestry; and to prevent and/or discourage untimely scattering of residential, and/or more dense urban development;

WHEREAS, the 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 ecological protection and restoration; agriculture; open space and scenic appreciation; and recreation and education activities, 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 Kansas Land Trust 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 preservation of lands of ecological, agricultural, scenic, historic, or recreational significance in Kansas;

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, in consideration of the above 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., the Grantor hereby voluntarily grants and conveys 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 Conservation Values of the Native Prairie, _____, and Riparian Buffer areas that include prime farmland soils and agricultural soils of statewide importance and the native prairie viability and 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 ecological, agricultural, historical, 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 involving agricultural management; ecological, wildlife habitat, and watershed protection and restoration; protection against invasive plant species and state-designated noxious weeds; open space and scenic appreciation; public education; and undeveloped recreation 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 a reasonable time 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;
- (d) To enter onto the Protected Property, in accordance with Section 7, for special access for educational purposes; and
- (e) To 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 house, garage, barn or other building, recreational courts or playing fields, landing strip, mobile home, swimming pool, billboard, sign, antenna, storage tank, utility poles, utility lines, utility system, tower, lights, commercial wind turbines, or any other temporary or permanent improvement or constructed assembly of a similar nature or with similar characteristics (a "**Structure**") constructed or placed on the Protected Property, except as permitted in Section 4.7 of this Easement.

3.2 Subdivision. The Protected Property shall not be divided, partitioned, or subdivided, and shall be conveyed only in its current configuration as a single unit.

3.3 Mining. There shall be no mining (e.g., hard rock, sand, gravel, soil) 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 Rights. Grantor 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 ranchland operations.

3.6 Waters and Wetlands.

(a) Grantor shall not alter sources, courses, or bodies of water; or the natural flow of water over or within the Protected Property; except as expressly permitted in this Section 3.6, and subject to the terms, conditions, and limitations of this Easement, including those set forth below.

(b) Grantor shall be permitted, without prior notice to Grantee, to maintain, repair, improve, replace, remove, and install conservation and drainage improvements (e.g., livestock crossings, terraces, water ways) that further the permitted uses of Section 4.10 for agricultural management (e.g., improve drainage of agricultural soils, reduce soil erosion) or of Section 4.11 for restoration activities.

(c) The establishment, construction, installation, improvement, or enlargement of ponds or spillways; the alteration of streams or stream banks; or any other alteration for purposes other than those listed in 3.6(b) above shall not be permitted without the prior notice to, and written consent of, Grantee pursuant to Sections 5.1 and 5.2 of this Easement. Maintaining and repairing existing ponds and spillways, as identified in Exhibit B and the Baseline Documentation Report, is permitted without notice to the Grantee.

(d) Notwithstanding anything herein to the contrary, in no event shall any alterations permitted under this Section 3.6 adversely affect water quality or aquatic species' habitat; and such alterations must be designed and implemented in accordance with the Conservation Values of this Easement, existing law and regulations, and generally accepted Best Management Practices ("BMPs"), as those practices may be identified from time to time by appropriate governmental or educational institutions.

(e) Notwithstanding the above exceptions, draining, tiling, diking, filling, dredging, or any other alteration of any wetland is prohibited.

3.7 Topography.

(a) Grantor shall not plow; till; ditch; drain; tile; dike; fill; excavate, extract or remove topsoil, sod, sand, gravel, rock, or other materials; or make any other alteration to the topography of the Protected Property, except as expressly permitted in this Section 3.7, and subject to the terms, conditions and limitations set forth in this Easement, including those set

forth below.

(b) Alterations necessary for maintenance and repair of conservation and drainage improvements pursuant to Section 3.6(b) for permitted uses of the Protected Property, under Section 4.10 for agricultural management (e.g., benefit grassland management, reduce soil erosion) or Section 4.11 for restoration activities, are permitted without notice to the Grantee.

(c) Any alterations of topography for purposes other than those listed in 3.7(b) above are not permitted without prior notice to and written consent of Grantee pursuant to Sections 5.1 and 5.2 of this Easement. This shall include those alterations otherwise requiring notice and consent of the Grantee under Section 3.6(c).

(d) Notwithstanding anything herein to the contrary, in no event shall any alterations permitted under this Section 3.7 adversely affect water quality or aquatic species' habitat; and any such alterations must be designed and implemented in accordance with the Conservation Values of this Easement, existing law and regulations, and generally accepted BMPs, as those practices may be identified from time to time by appropriate governmental or educational institutions.

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 and Trails. There shall be no construction, improvement, or relocation of roads or trails involving excavation of the surface or establishment of other rights-of-way on the Protected Property, except as permitted under Section 4.5 of this Easement. Impervious/paved roads and concrete or asphalt pavement are prohibited on the Protected Property.

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

3.11 Pesticides. There shall be no use of pesticides (e.g., herbicides, insecticides, fungicides, rodenticides) on the Protected Property except as expressly permitted in Section 4.12. Aerial spraying of pesticides shall not be permitted on the Protected Property.

3.12 Vehicles. Vehicles shall not be operated on the Protected Property, except as permitted in Section 4.6 of this Easement. The term "vehicles" includes but is not limited to cars, trucks, all terrain vehicles, 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.

3.13 Commercial Activities. Commercial activities are prohibited on the Protected Property either by Grantors; Grantors' invitees, licensees, or agents; or Grantors' successors and

assigns; except for agricultural and recreational uses of the Protected Property permitted under Sections 4.10 and 4.13 of this Easement.

3.14 Impervious Surfaces. Structures, impervious/paved roads, concrete or asphalt pavement, and other such improvements that permanently cover soil resources (collectively referred to herein as “**Impervious Surfaces**”) shall not be permitted on the Protected Property.

3.15 Riparian Buffer. The land extending at least 66 feet from the banks of the stream on the Protected Property shall constitute a Riparian Buffer, as identified in Exhibit A and the Baseline Documentation Report. Grantor agrees to maintain vegetative cover (e.g., trees, shrubs, grasses) within the Riparian Buffer for protection of water quality (e.g., slowing and filtering runoff, stabilizing stream banks) and aquatic and wildlife species (e.g., habitat, travel corridors). Soil disturbance (e.g., plow, till, plant crops) is prohibited within the Riparian Buffer; except as necessary to maintain, repair, improve, relocate, or construct stream crossings for roads and trails, as permitted pursuant to Section 4.5 of this Easement. Notwithstanding anything herein to the contrary, in no event shall any alterations permitted under this Section 3.15 adversely affect water quality or aquatic species’ habitat; and such alterations must be designed and implemented in accordance with the Conservation Values of this Easement, existing law and regulations, and generally accepted BMPs, as those practices may be identified from time to time by appropriate governmental or educational institutions.

3.16 Commercial Feedlots. The establishment or maintenance of commercial feedlots (“**Commercial Feedlots**”) is prohibited. For purposes of this Easement, Commercial Feedlots are defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and continuous feeding of livestock. Nothing in this section shall prevent Grantors from (a) seasonally or periodically confining Grantors’ livestock into an area for feeding; (b) leasing pasture for the grazing of livestock owned by others; (c) confining bulls when not breeding or calves after birth; or (d) keeping animals for agricultural ranchland operations or for personal use or enjoyment; provided, however, that these uses are conducted 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 nor detrimental to native species, soil resources, 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 of this Easement.

4.2 Grassland and Timber Management. Subject to the limitations in this Section, cutting. Grassland management (e.g., cutting and burning of trees, woody shrubs, and prairie grasses) may be accomplished to maintain the native tallgrass prairie character of the Protected Property, to maintain fences, and to prevent invasion of woody plants and control of non-native vegetation. Subject to the limitations in Section 3.10 of this Easement, timber management (e.g., removal of diseased trees, selective harvesting of mature 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 nor detrimental to native species, soil resources, water quality, and the Conservation Values of this Easement. Trees cut for authorized purposes may be utilized for non-commercial use.

4.3 Fences. Grantors shall be responsible for complying with Kansas fence laws. Grantors may repair, replace, maintain, improve, relocate, remove, or construct fencing and gates as necessary to secure the Protected Property and for permitted agricultural uses (e.g., customary management of livestock) under Sections 4.10 of this Easement. Existing stone fences must be protected and shall not be removed without prior approval.

4.4 Signs. Grantors may place interpretive signs on the Protected Property (e.g., identifying the property, indicating protection by this Easement, identifying habitat restoration, stating “no hunting” or “no trespassing”). Signs shall be no larger than 150 square feet in area.

4.5 Roads. Existing pervious/unpaved roads on the Protected Property, identified in Exhibit A and the Baseline Documentation Report, may be maintained and repaired without notice to the Grantee. Relocating or improving existing pervious/unpaved roads may be permitted without notice to the Grantee, provided that:

- (a) The road furthers the permitted agricultural or recreational uses of the Protected Property under Sections 4.10 or 4.13 of this Easement;
- (b) Gravel is prohibited in Native Prairie Areas and shall be used sparingly in the _____ and Riparian Buffer areas in order to prevent erosion and soil loss (e.g., improve washed-out, blocked, wet, or muddy crossings);
- (c) There is no excavation of the surface, other alteration of the topography, or establishment of other rights-of-way on the Protected Property; and
- (d) Notwithstanding anything herein to the contrary, in no event shall any alterations permitted under this Section 4.5 adversely affect water quality or aquatic species’ habitat; and all such work must be designed and implemented in accordance with the Conservation Values of this Easement, existing law and regulations, and generally accepted BMPs, as those practices may be identified from time to time by appropriate governmental or educational institutions.

Relocation or improvement of existing roads or trails not meeting conditions (a), (b), (c), and (d) of this Section, or the construction of new pervious/unpaved roads or trails, shall be permitted only with prior notice to and written consent of Grantee pursuant to Sections 5.1 and 5.2 of this Easement. Abandoned roads and trails 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.

4.6 Vehicles. Motorized vehicles may be operated on the Protected Property as necessary to carry out permitted agricultural, recreational, and educational uses of the Protected Property under Sections 4.10, 4.13, and 4.14, respectively, of this Easement. Use of vehicles should be limited to existing roads whenever feasible. In those cases where permitted vehicle use must be conducted off-road in order to conduct the uses permitted under this Easement, it shall be conducted a manner to minimize rutting of trails. In all cases, vehicle use shall be conducted in a manner neither wasteful of nor detrimental to native species, soil resources, water quality, and the Conservation Values of this Easement.

4.7 Agricultural Structures and Improvements. All construction, erection, installation, or placement of structures, buildings, or other improvements is prohibited unless such structures, buildings, or improvements are permitted in this Section. All existing agricultural structures and other improvements (e.g., _____, _____) may be maintained, repaired, renovated, removed, and replaced at their current location, as identified on Exhibit B and indicated in the Baseline Documentation Report. New agricultural structures and improvements lacking permanent foundations necessary to carry out agricultural operations (e.g., _____, _____), as permitted under Sections 4.10 and consistent with the Conservation Values of this Easement, may be constructed on the Protected Property without the permission of the Grantee; provided, however, that such improvements involving disturbance to topography (e.g., wells, buried lines, windmills) may only be constructed after consultation with and written permission from the Grantee, pursuant to Sections 5.1 and 5.2 of this Easement.

4.8 Utilities. Grantor may install utilities necessary for agricultural uses permitted under Section 4.10 of this Easement 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 native species, soil resources, water quality, and the Conservation Values of this Easement. The Grantor shall notify the Grantee before granting any related easements and shall obtain prior written permission from the Grantee pursuant to Sections 5.1 and 5.2 of this Easement. 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 Agriculture. Grantors may engage in agricultural management, activities, and uses relating to agricultural operations (e.g., grazing, haying), 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 nor detrimental to native species, soil resources, water quality, and the Conservation Values of this Easement.

4.11 Restoration. Cutting and burning of trees, woody shrubs, and prairie grasses may be accomplished to restore and maintain the native tallgrass prairie character of the Protected Property, to maintain fences, and to prevent invasion of woody plants. Trees cut for authorized

purposes may be utilized for non-commercial use. Wooded Riparian Buffer areas can be managed as woodlands or can be restored to prairie, wetlands, or other native habitats.

4.12 Pesticides. Herbicide application is permitted by spot application only for the control of state-designated noxious weeds or invasive plant species. Broadcast spraying of pesticides may be permitted, at the sole discretion of the Grantee, provided that spot application is not practical because of the severity and pervasiveness of the state-designated noxious weeds or invasive plant species or because rough topography or other conditions do not otherwise permit it; in which case, Grantor shall provide thirty (30) days prior written notice to the Grantee, and the Grantee shall grant or withhold its approval in writing within thirty (30) days pursuant to Section 5.2 of this Easement. The use of all pesticides shall be managed to:

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

4.13 Recreation. Grantor, Grantor's invitees and licensees, or Grantor's successors and assigns may undertake recreational activities (e.g., camping, hiking, horseback riding, 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, except that use of the Protected Property for more than "de minimis" commercial recreation activity is prohibited. The term "de minimis" shall have the meaning as set forth in § 2031(c)(8)(B) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.

4.14 Educational Activity. Educational activity (e.g., nature walks, wildlife and habitat research) is permitted as long as such activity is consistent with the Conservation Values expressed in this Easement and is conducted on the Protected Property in a manner neither wasteful of nor detrimental to native species, soil resources, water quality, and the Conservation Values of this Easement. Grantor may make the Protected Property accessible to the public to enjoy the ecological, agricultural, scenic, and recreational 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 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 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;
- (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;
- (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;
- (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.

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 native prairie viability, productive capacity, and soil resources; ecological diversity, wildlife habitat, and watershed health; and open space and scenic, and agricultural 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 nature walks, trail rides, or other educational activities for its members and others.

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;

- (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;
- (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;
- (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;
- (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;
- (f) There is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property;
- (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 the 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 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. 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 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 (**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.

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. 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. The balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Section 9.2, which Grantee shall be entitled to in accordance with Section 9.4.

9.4 Application of Proceeds. In the event of extinguishment or condemnation of this Easement pursuant to this Section, or damages owed to the Grantee for damages to the Conservation Values of this Easement, Grantee shall use any proceeds received 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 appropriate and consistent with the purposes of this Easement, in the sole judgment of the Grantee, 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 and Conservation Values of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of _____ County, Kansas.

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 (“**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 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, 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 13th Street
Lawrence, KS 66044-3502

To Designated Army
Official at _____: _____

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.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantors and Grantee , and _____ 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 _____
Catherine Hauber, its President

STATE OF _____, _____ COUNTY, ss:

This instrument was acknowledged before me on _____ __, 200__, by Catherine Hauber, President of Kansas Land Trust, Inc., a non-profit Kansas corporation and Catherine Hauber duly acknowledged the execution of the same as the act and deed of said corporation.

Notary Public

SCHEDULE OF EXHIBITS

Exhibit A: Legal Description

Exhibit B: Aerial Photograph and Map

Exhibit C: Summary of Baseline Documentation Report

(Exhibit D: Mortgage Subordination)

Exhibit A: Legal Description

Exhibit B: Aerial Photograph and Map

Exhibit C: Summary of Baseline Documentation Report

The Baseline Documentation Report (“**BDR**”) describes the man-made features on the Protected Property, the ecological features of the Protected Property and contains the following Exhibits that further describe and identify features of the Protected Property. A signed, original copy of the BDR is maintained in the files of the Kansas Land Trust; 16 E. 13th St.; Lawrence, KS 66044.

Schedule of Exhibits:

- A. Legal Description of the Protected Property
- B-1. Aerial Photograph (NAIP 2008)
- B-2. Aerial Photograph (County Community GIS Parcel Map 2008)
- C-1-2. Aerial Photograph with Structures, Land Use Areas, and Other Features
- D. Plant List
- E. Kansas Atlas Map
- F. County Ownership Map
- G-1. Aerial Map of Easement (NAIP 2008)
- G-2. Road Map of Easement (Google Map 2010)
- H. Topographic Map
- I-1. Soils Map
- I-2. Soils Map Legend
- I-3. Soils Inventory Report
- I-4. Non-technical Soil Definitions
- I-5. County Prime Farmland and Statewide Important Soils
- I-6. Soils Summary Table
- J. Photo Point Map and Photographs
- K. Phase I Environmental Site Assessment Findings and Opinion
- L. Title Commitment with Encumbrance Documents
- M. Title Insurance Policy (Document will be added to the BDR later.)