

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (“**Easement**”) is made this 2nd day of November, 2007, by Angelo C. Garzio, Trustee of the Angelo C. Garzio Trust U/T/A dated August 23, 1993, as amended, having an address of 1902 Blue Hills Road, Manhattan, Riley County, Kansas (“**Grantor**”), 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**”).

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Riley County, Kansas, more particularly described below (the “**Protected Property**”):

The North Half of the Northwest Quarter of Section 27, Township 8 South, Range 6 East of the 6th P.M., in Riley County, Kansas, LESS the approximately 1.84 acre tract taken by the State of Kansas for highway purposes as set out in Case No. 12964 in the District Court of Riley County, Kansas.

WHEREAS, the Protected Property possesses ecological, educational, scenic, agricultural and open space values (collectively, “**Conservation Values**”) of great importance to Grantor, the people of Riley County and the people of the State of Kansas;

WHEREAS, the specific Conservation Values of the Protected Property are documented in an inventory of relevant features of the Protected Property, on file at the offices of Grantee-- which consists of a species list, reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation 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 grant (“**Baseline Documentation Report**”);

WHEREAS, in particular, the Protected Property consists of approximately 75 acres of land, including about 30 acres of native prairie (“Native Prairie Area” and brome grassland, trees, ponds, an intermittent stream and wildlife habitat; the location of the Native Prairie Area and other features are depicted in the Baseline Documentation Report.

WHEREAS, Grantor intends that the Conservation Values of the Protected Property be preserved 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 the haying of grasslands, a cabin and a pottery studio existing as of the date of this Easement and the anticipated uses including nature/conservation educational field trips, workshops and seminars, nature retreats and forestry and plant research; all such uses as restricted according to the terms herein;

WHEREAS, Grantor further intends, as owner of the Protected Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Protected Property in perpetuity;

WHEREAS, 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 thereunder (the "**Internal Revenue Code**"), whose primary purpose is the protection and preservation of lands of ecological, historical, scenic, agricultural or recreational significance in Kansas; and

WHEREAS, Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve 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 assure that the Protected Property will be retained forever predominantly in its natural, scenic, agricultural, 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. Grantor intends that this Easement will confine the use of the Protected Property to such activities, including, without limitation, those involving haying the grasslands, a cabin, a pottery studio ecological research (forestry and plant research) and public education (nature/conservation educational field trips, workshops and seminars), and nature retreats (all such uses must be conducted according to the Management Plan (hereinafter defined), and do not interfere with wildlife habitat and as are consistent with the purpose of this Easement. Grantor and Grantee may enter into an agreement, regarding the suggested management of the Protected Property, such agreement is referred to herein as the, "**Management Plan**".

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

- (a) To preserve and protect the Conservation Values of the Protected Property;
- (b) To enter upon the Protected Property annually at reasonable times in order to monitor Grantor's 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

Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's 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 purpose 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.

3. PROHIBITED USES. Any activity on or use of the Protected Property inconsistent with the purpose 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 4.4 and 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*, any other temporary or permanent improvement of a similar nature or with similar characteristics. – *fishing dock at pond, or nature trail, signage, footbridge, irrigation, electrical?*

3.2 Subdivision. The Protected Property may not be divided, partitioned, subdivided or conveyed. – *convey to RCCD at some point?*

3.3 Mining. There shall be no hard rock, sand, gravel, or soil mining on the Protected Property. *Excavate or repair ponds, streams, repair pond dam and spillway, etc?*

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

3.5 Soil and Water. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters is prohibited.

3.6 Watershed and Wetlands. There shall be *no damming*, impoundment or channelization of the streams or watercourses on the Protected Property. There shall be *no alteration or manipulation of the existing ponds, except after consultation with and written permission from the Grantee*, pursuant to Sections 5.1 and 5.2 of this Easement.

3.7 Topography. There shall be no ditching, draining, diking, filling, excavating, extracting or removal of topsoil, sod, sand, gravel, rock, or other materials, or any change in the topography of the Protected Property in any manner. Exposed rock and rock outcrops provide habitat for a diverse array of animals and contribute to the biological diversity of both flora and fauna and shall not be removed or disturbed.

3.8 Plowing. There shall be no tilling or plowing of the Protected Property, except as allowed under Section 4.8 herein.

3.9 Dumping. There shall be no dumping of trash, garbage, hazardous or toxic substances or other substance or material on the Protected Property.

3.10 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 as provided in Section 4.10.

3.11 Plant Removal and Introduction. Excavation and/or removal of native plants on that portion of the Protected Property identified as “Native Prairie Area” in the Baseline Documentation Report is prohibited. No non-native trees, grasses or other plant species shall be planted on such “Native Prairie Area” of the Protected Property.

3.12 Timber Harvest. There shall be *no commercial timber harvest* from the Protected Property. *Thinning, removing invading cedars or others, further plantings for wildlife?*

3.13 Spraying. There shall be no use of insecticides, fungicides or rodenticides on the Protected Property. Herbicides may be used for the control of state-designated noxious weeds and/or for the control of other invasive woody plant species, but their use will be designed to minimize the impact on the plant diversity of native species. Herbicides shall be used only in those amounts and with a frequency of application that constitute the minimum necessary for control and shall be used in compliance with all governmental regulations. Aerial spraying or general broadcast spraying of herbicides shall not be permitted on the Protected Property.

3.14 Grazing. There shall be *no livestock grazing* permitted on the Protected Property.

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

3.16 Vehicles. Except as necessary for the maintenance of fences and as allowed under Section 4.10, motorized vehicles, including but not limited to, cars, trucks, tractors and recreational vehicles, such as snowmobiles, dune buggies, motorcycles, all-terrain *vehicles, shall not be operated on the Protected Property.*

3.17 Commercial Activities. Except for the pottery studio allowed pursuant to Section 4.7, and the haying allowed pursuant to Section 4.8, *commercial activities shall not be permitted* on the Protected Property either by Grantor, Grantor’s agents, or Grantor’s personal representatives, heirs, successors and assigns. Commercial recreational activities are prohibited. *This prohibits some management and income activities.*

3.18 Animal confinement. There shall be no commercial confinement facilities for livestock, swine or poultry on the Protected Property.

4. GRANTOR'S RESERVED RIGHTS. Grantor reserves to himself, and to his personal representatives, heirs, successors, and assigns, all rights accruing from his 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 purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

4.1 Conveyance. Grantor 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 Kansas Land Trust in accordance with section 12 below.

4.2 Timber. Cutting of trees and woody shrubs may be accomplished to maintain the character of the Protected Property, to maintain the health of the timber stand(s) on the Protected Property, to maintain fences and to prevent invasion of woody plants on the native prairie and the restored native grass. Trees cut for authorized purposes may be utilized for personal use as firewood.

4.3 Fences. Grantor shall be responsible for complying with Kansas fence laws. Grantor may construct, repair, replace, maintain, improve or remove any additional fencing as the Grantor deems necessary to secure the Protected Property.

4.4 Signs. Grantor may place interpretive signs and "no hunting or trespassing without written permission" or similar signs on the Protected Property.

4.5 Educational Use. Grantor 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.

(a) Grantor may use the Protected Property for nature/conservation educational field trips, workshops and seminars, nature retreats and forestry and plant research ("**Educational Uses**"). Any user allowed access to the Protected Property for Educational Uses, must have in their possession during such use written permission from Grantor.

(b) In order to protect the Conservation Values for which this Easement is granted, for public use other than the uses permitted under Subsection 4.5(a), Grantor agrees to consult with Grantee before opening the land to public use ("**Public Use**").

4.6 Vehicles. Motorized vehicles may be operated on the Protected Property to transport educational groups with special needs, to maintain fences, to till/plow according to Section 4.8, to hay the grassland according to Section 4.8 and to remove trees and shrubs in order to maintain the character of the Protected Property. Use of permitted vehicles should, however, be in a

manner that will minimize impact on native vegetation and generally be confined to the driveway and a few pasture trails when and where feasible.

4.7 Structures.

(a) **Existing Structures.** The following existing structures are permitted and may be maintained and repaired: (1) a cabin (approximately 15'x30'), (2) pottery studio (approximately 14'14'), (3) three open sided metal sheds; (4) four small storage sheds; (5) two covered wood piles; and (6) two gravel driveways. . The approximate location of the existing structures is identified in the Baseline Documentation. In the event of the destruction of an existing structure by wind, fire or other act of God, the existing structures may be rebuilt in the same location or replaced with a substantially similar structure. Existing utilities serving the existing structures may be maintained and repaired.

(b) **New Structures.** The Grantor may construct or make the following improvements on the Protected Property outside the Native Prairie Area, after giving notice and submitting plans to Grantee:

- (1) a parking area according to Section 4.10;
- (2) a secure entrance gate; and
- (3) bird-watching and wildlife observation areas.

4.8 Hay Meadow and Prairie. Tilling and plowing is permitted in the brome grassland (identified in the Baseline Documentation Report) for the purpose of restoring such to native grass.

4.9 Ponds. Grantor is permitted to *reduce the size of the ponds* (the location of the ponds are identified in the Baseline Documentation Report), after notice and submission of plans to Grantee.

4.10 Driveway/Parking Area. The existing driveway (identified in the Baseline Documentation Report) may be maintained, graveled or re-graveled. The construction of a parking area is permitted, provided that Grantor shall give Grantee notice of and submit plans and specifications for the parking area prior to construction. The location of the parking area shall be limited to the location of the Parking Envelope agreed upon by Grantor and Grantee in the Baseline Documentation Report. Motorized vehicles may be operated on the existing driveway and the parking area described above.

4.11 Trails. Grantor is permitted to develop hiking and walking trails on the Protected Property, provided such trails *shall be mowed trails.*

5. NOTICE AND APPROVAL.

5.1 Notice of Intention to Undertake Certain Permitted and Previously Unspecified Actions. Grantor agrees to notify Grantee prior to undertaking any activity not specified in section 4 that may have a material adverse impact on the Conservation Values of the Protected Property. Also, Grantor agrees to notify Grantee prior to undertaking activity covered by Section 4. Whenever notice is required, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends 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 purpose of this Easement.

5.2 Grantee's Approval. Where Grantee's approval is required as set forth in paragraph 5.1, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

5.3 Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose 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, Grantor agrees that, pending resolution of the dispute, Grantor 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 Grantor 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 Grantor 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 purpose 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 Grantor 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 at the time of this grant.

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 Grantor's liability therefor, 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 Grantor 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. Grantor agrees 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 paragraph 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 Grantor, including, without limitation, costs and expenses of litigation, including expert witness fees and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails 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 Grantor 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 Grantor shall impair such right or remedy or be construed as a waiver.

6.8 Waiver of Certain Defenses. *Grantor hereby waives any defense of laches, estoppel, or prescription.*

6.9 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Before taking such emergency action, however, Grantor 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 Grantor, the Kansas Land Trust 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. *Grantor retains 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, including without limitation such general liability insurance coverage as may be prudently required in connection with all activities to be conducted on the Property. Grantor remains 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. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

8.2 Taxes. *Grantor 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. *Grantee work with Grantor to reduce valuation and property tax, given the easement?*

8.3 Representation and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of his 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) Grantor 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) There is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property; and

(e) 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 Grantor might reasonably expect to form the basis for any such proceeding, investigations, notices, claims, demands, or orders.

(f) *Grantor hereby warrants and represents that the Grantor is seized of the Protected Property in fee simple and has 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. *Survey, title commit, sketches and plans?*

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, Grantor agrees to take all steps necessary to assure its containment and/or removal and remediation, including any cleanup that may be required.

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 Grantor's 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. *Grantor hereby releases and agrees to hold harmless*, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, 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 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; (d) the obligations, covenants, representations, and warranties of paragraphs 8.1 through 8.5; and (e) enforcement of this indemnity clause by the Grantee in an action in which the Grantee 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 purpose 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. Grantor 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 paragraph 9.2.

9.2 Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 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 used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code. For the purposes of this paragraph, 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, Grantor 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 therefrom. All expenses reasonably incurred by Grantor 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 paragraph 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 grant.

10. AMENDMENT. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to 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 purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Riley County, Kansas.

11. 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 thereunder, 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 purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor 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.

11.1 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 Grantor 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 11.

12. SUBSEQUENT TRANSFERS. Grantor agrees 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. Grantor further agrees 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 Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

13. ESTOPPEL CERTIFICATES. Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor 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 Grantor request more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request therefor.

14. 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 Grantor: Angelo C. Garzio
1902 Blue Hills Road
Manhattan, KS 66502

To Grantee: Kansas Land Trust, Inc.
16 East 13th Street
Lawrence, KS 66044-3502

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

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

16. GENERAL PROVISIONS.

16.1 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Kansas.

16.2 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 purpose 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 purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

16.3 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.

16.4 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.

16.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

16.6 Joint Obligation. In the event any of Grantor's heirs, successors or assigns shall consist of more than one individual or entity, then the obligations imposed by this Easement upon such owners shall be joint and several.

16.7 Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon Grantor and his personal representatives, heirs, 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 "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and his personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

16.8 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.

16.9 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.

16.10 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 Grantor and Grantee have set their hands on the day and year first above written.

Grantor:

by _____
Angelo C. Garzio, Trustee of the Angleo
C. Garzio Trust U/T/A dated August 23, 1993

STATE OF _____, _____ COUNTY, ss:

This instrument was acknowledged before me on _____, 2007, by Angelo C. Garzio, Trustee of the Angleo C. Garzio Trust U/T/A dated August 23, 1993.

My commission expires:

Notary Public

Grantee: Kansas Land Trust, Inc.

by _____
Beverley J. Worster, President

STATE OF KANSAS, DOUGLAS COUNTY, ss:

This instrument was acknowledged before me on _____, 2007, by Beverley J. Worster, President of Kansas Land Trust, Inc., a nonprofit Kansas corporation and Beverley J. Worster duly acknowledged the execution of the same as the act and deed of said corporation.

My commission expires:

Notary Public