

DECLARATION OF RESTRICTIVE COVENANTS

The Declarant, _____, is the fee simple owner of the certain real property located in _____ County, Kansas, as described on Exhibit A, which is attached hereto and incorporated herein by reference (the "Development"). Declarant has applied for and received Permit No. _____ from the United States Army Corps of Engineers (the "Corps") to fill certain wetlands in waters of the United States (the "Permit"). In consideration of the issuance of the Permit and in compliance with the terms thereof, and for other good and valuable consideration, the Declarant hereby declares that that the portion of the Development described in Exhibit B ("the Property") shall henceforth be subject to the following restrictive covenants (the "Restrictions"). As used herein, the term "Declarant" includes and shall be binding upon _____ and his/her/its successors, heirs, and assigns.

1. **Purpose:** The purpose of these Restrictions is to retain and maintain land or water areas on the Property in their natural, vegetative, hydrologic, scenic, open, agricultural, or wooded condition, and to retain such areas as suitable habitat for fish, plants, or wildlife. Those wetland or upland areas that are to be restored, enhanced, or created pursuant to the Permit shall be retained and maintained in the restored, enhanced, or created condition required by the Permit.

2. **Rights of Corps and Owners in the Development:** The following rights are conveyed to the Corps and any Owner of any parcel of real estate in the Development (the "Owner" or "Owners"):

a. The right to take action to preserve and protect the environmental value of the Property; and

b. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of these Restrictions, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;

c. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if the Declarant is complying with the covenants and prohibitions contained in these Restrictions; and

d. The right to proceed at law or in equity to enforce the provisions of these Restrictions, and to prevent the occurrence of any of the prohibited activities hereinafter set forth.

3. **Prohibited Uses:** Except for restoration, creation, enhancement, maintenance, and monitoring activities, or surface water management improvements, which are permitted or required by the Permit, the following activities are prohibited on the Property:

a. Construction of any structure or object (i.e., buildings, roads, above or below ground utilities, signs, billboards etc.) without written approval from the Corps of Engineers prior to construction;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except as may be permitted by the Permit, and except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by the Corps;

d. Planting of nuisance, exotic, or non-native plants as listed by the State of Kansas;

e. Exploration for, or extraction of, oil or gas in such a manner as to affect the surface, or excavation, dredging, or removal of coal, loam, peat, gravel, soil, rock, or other material substance, except as may be permitted or required by the Permit;

f. Use of motorized and non-motorized vehicles, the keeping or riding of horses, grazing, livestock confinement, or other surface use that may affect the natural condition of the Property, except for vehicle use for purposes of maintenance and upkeep, or as otherwise may be permitted or required by the Permit;

g. Tilling, plowing, planting of crops, digging, mining, or other activities that are or may be detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or fish and wildlife habitat preservation, including but not limited to ditching, diking, and fencing, except as permitted or required by the Permit;

h. The extraction of water from the Property or adjacent properties owned by Grantor, or the impoundment of water on the Property or on adjacent properties owned by Grantor, so as to affect the hydrology of the Property;

i. Acts or uses detrimental to the aforementioned retention and maintenance of land or water areas;

j. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

4. **Reserved Rights:** Declarant reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any Corps rule, criteria, permit, or the intent and purposes of these Restrictions.

5. **Taxes:** Declarant shall pay any and all applicable real property taxes and assessments levied by competent taxing authority on the Property.

6. **Maintenance:** Declarant shall, at Declarant's sole expense, operate, maintain and keep up the Property consistent with the purpose of these Restrictions. Declarant shall remove from the Property any nuisance, exotic, or non-native plants as listed by the State of Kansas and

shall maintain the hydrology of the Property as it currently exists or as otherwise required by the Permit.

7. **Hazardous Waste:** Declarant covenants that if any hazardous substances or toxic waste exist or has been generated, treated, stored, used, disposed of, or deposited in or on the Property, or there are or have been any underground storage tanks on the Property, Declarant shall be responsible for any and all necessary costs of remediation.

8. **Public Access:** No right of access by the general public to any portion of the Property is conveyed by these Restrictions.

9. **Liability:** Declarant shall continue to retain all liability for any injury or damage to the person or property of third parties that may occur on the Property arising from solely by reason of ownership of the Property. Neither Declarant, nor any person claiming by or through Declarant, shall hold the Corps or any Owner liable for any damage or injury that may occur on the Property.

10. **Recording Requirements:** Declarant shall record these Restrictions in the official records of _____ County, Kansas, and shall re-record these Restrictions at any time the Corps may require to preserve its rights. Declarant shall pay all recording costs and taxes necessary at any time to record these Restrictions in the public records. Declarant shall thereafter insert the terms and restrictions of these Restrictions in any deed or other legal instrument by which Declarant divests himself/herself/itself of any interest in the Development, and shall provide a copy of these Restrictions to the new owner(s).

11. **Enforcement:** The terms and conditions of these Restrictions may be enforced in an action at law or equity by the Corps or any Owner against the Declarant or any other party violating or attempting to violate these Restrictions. Venue for any such action shall be in _____ County, Kansas. Enforcement of these Restrictions shall be at the reasonable discretion of the Corps or Owner, and any forbearance on behalf of the Corps or Owner to exercise any right hereunder in the event of any breach by Declarant shall not be deemed or construed to be a waiver of rights. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions, and restrictions of these Restrictions, including without limitation, the costs of suit, and attorney's fees, shall be borne by and recoverable against the non-prevailing party in such proceedings, except that such costs shall not be recoverable against the Corps. In addition, if the Corps or any Owner shall prevail in an enforcement action, such party shall also be entitled to recover that party's cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of these Restrictions or to the vegetative and hydrologic condition required by the Permits.

12. **Effect of Restrictions:** These Restrictions shall take effect immediately upon declaration and shall run with the land in perpetuity. These Restrictions shall be deemed to survive unity of title. Declarant shall take no action to rescind, revoke, or otherwise nullify these Restrictions.

13. **Successors:** The covenants, terms, conditions, and restrictions of these Restrictions shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

14. **Notices:** All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest. Any and all notices to the Declarant may be addressed to:

15. **Severability:** If any provision of these Restrictions or the application thereof to any person or circumstances is found to be invalid, the remainder of the Restrictions shall not be affected thereby, as long as the purpose of these Restrictions is preserved.

16. **Alteration or Revocation:** These Restrictions may be amended, altered, released, canceled, or revoked only by written agreement between all then-current owners of all parcels of land located in the Development as shown the by the public records of _____ County, Kansas. No action shall be taken, however, without advance written approval by the Corps. Corps approval shall be by letter attached as an exhibit to the document amending, altering, canceling, or revoking the Restrictions, and said letter shall be informal and shall not require notarization. It is understood and agreed that Corps approval requires a minimum of sixty (60) days written notice to the Corps, and that the Corps may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment, alteration, release, cancellation, or revocation together with written Corps approval thereof shall then be filed in the public records of _____ County, Kansas, within 30 days thereafter.

17. **Controlling Law:** The interpretation and performance of these Restrictions shall be governed by the laws of the State of Kansas.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Covenants and Restrictions this ____ day of _____, 20__.

Signed in the presence of:

DECLARANT:

Print Witness Name: _____

By: _____

Print: _____

Title: _____

Print Witness Name: _____

STATE OF KANSAS
COUNTY OF _____

The foregoing Declaration of Restrictive Covenants was acknowledged before me this
_____ day of _____, 20____, by _____ as _____
of _____ who is personally known to me or has produced
_____ as identification.

My Commission Expires:

NOTARY PUBLIC