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DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 26th day of October, 2011, by City of Oxford Kansas having an address at 115 S Sumner ("Grantors"), in favor of Watershed Land Trust Inc, a non-profit Kansas corporation qualified to do business in Kansas, having an address at 7211 W 98th Terr #140, Overland Park, KS 66212 ("Grantee")

WITNESSETH

WHEREAS, Grantors are the sole owners in fee simple of certain real property in Sumner County, Kansas, more particularly described below (the "Protected Property")

A part of the Northwest, Southwest, and Southeast Quarters of Section 13 Township 32 South, Range 2 East of the 6th P.M., Sumner County, Kansas, beginning on the South line of the AT&SF Railroad right-of-way where it intersects the West bank of the Arkansas River thence South 89 deg 38 min 51 sec West (assumed) along the South line of said right-of-way, 87 09 feet, thence South 1 deg 11 min 59 sec East along the toe of an existing dike, 276 01 feet, thence south 0 deg 06 min 36 sec along said existing dike, 287 90 feet, thence South 1 deg 19 min 26 sec East along said existing dike, 209 00 feet, thence South 0 deg 14 min 35 sec West, along said existing dike 269 39 feet, thence South 24 deg 56 min 24 sec West along said existing dike 374 94 feet, thence South 24 deg 26 min 54 sec West along said existing dike, 340 52 feet, thence South 47 deg 51 min 34 sec West along said existing dike 18 60 feet, thence South 65 deg 28 min 16 sec West along said existing dike 17 88 feet, thence North 89 deg 48 min 37 sec West along said existing dike 417 92 feet to the West line of tract conveyed to the city of Oxford in Book 332, Page 553 in the Office of the Register of Deeds, Sumner County, Kansas, thence South 0 deg 21 min 09 sec East along the West line of said tract 542 06 feet more or less to the center of Lost Creek, thence Southeasterly along the center line of Lost Creek, 1243 67 feet to the West Bank of the Arkansas river, thence Northerly along the West Bank of the Arkansas River to the point of beginning, containing 22 06 acres more or less This legal description—dated January 14, 2010—was provided by Charles B. Cullum (LS 599), Cullum Surveying, Arkansas City, Kansas 620-442-7100

And

Beginning at the Southwest corner of the Southwest Quarter of Section 13, Township 32 South, Range 2 East of the 6th P.M., Sumner County Kansas, thence South 89 deg 40 min 57 sec East (assumed) along the South line of said Quarter Section, 2305 56 feet, to the West Bank of the Arkansas River, thence Northerly along the West Bank of the Arkansas River to a point 475 00 feet North of the South line of said Quarter Section, thence North 89 deg 40 min 57 sec West, 924 64 feet to a point 1315 80 feet East and 475 00 feet North of the Southwest corner of said Quarter Section thence South 0 deg 19 min 03 sec West 415 00 feet, thence North 89 deg 40 min 57 sec West, 1315 80 feet to the West line of said Quarter Section thence South along the West line of said Quarter Section, 60 00 feet to the point of beginning. Containing 12 79 acres more or less

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Return Watershed Land Trust, Inc, Windmill Village, Bldg Four, 7211 W 98th Terr, Overland park KS 66212

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WHEREAS, the Protected Property possesses ecological, educational, scenic, open space, historical, and recreational values (collectively, "Conservation Values") of great importance to Grantors, the people of Sumner 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" or "BDR"),

WHEREAS, in particular, the Protected Property consists of 34.85 acres of riparian land adjacent to the Arkansas River. From the northern most boundaries, a narrow band of riparian woodland extends south along the west bank of the Arkansas River for the length of the north parcel. Cool season grass between the toe of the lagoon dike and the riparian woodland is regularly mowed to inhibit brush/tree encroachment on the lagoon dike (see Appendix A, Photograph 7, BDR). Discharge from the lagoon system flows through a constructed swale to the Arkansas River (see Appendix A, Photograph 8, BDR). Currently, agricultural crops are grown in the north parcel, south of the existing wastewater lagoons (see Appendix A, Photograph 9, BDR). A low-lying area within the cropped field holds water during wet seasons precluding planting (see Appendix A, Photograph 10, BDR). A narrow band of riparian woodland borders the dike along Lost Creek (see Appendix A, Photograph 10, BDR). In the south parcel, a gravel entry road leads to an open and regularly mowed area used for the City tree and limb dump (see Appendix A, Photograph 11, BDR). Areas around the tree dump are unmowed native grasses, forbs, brush and trees. The south easement parcel lies east of the tree dump and consists of native riparian woodlands (see Appendix A, Photographs 12 and 13, BDR).

WHEREAS, as of the date of this Easement, the Protected Property benefits the people of the City of Oxford, County of Sumner, State of Kansas and all those within the Arkansas River Watershed

WHEREAS, Grantors intend 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 erosion protection and wildlife habitat existing as of the date of this Easement, and

WHEREAS, riparian zones cumulatively play a significant role in moderating storm flows to streams thereby reducing downstream flooding, provide flood storage capacity and groundwater recharge, and provide shade to the water body providing a more stable aquatic habitat for a variety of aquatic and terrestrial species, for the benefit of the public, and

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WHEREAS, Grantors further intend, as owners 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 Grantors 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 Grantors hereby voluntarily grant and convey to Grantee this Easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth

1 PURPOSE All of the above recitals of fact are incorporated herein as if fully set forth. It is the purpose of this Easement to assure that the Protected Property will be retained forever predominantly in its natural scenic, historic, 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. Grantors intend that this Easement will confine the use of the Protected Property to such activities, including, without limitation, those involving (farming, ranching, wildlife habitat, ecological research, recreation and public education), as are consistent with the purpose of this Easement.

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 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. To enter upon the Protected Property as necessary to comply with the requirements of Section 2 (f).
- (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

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- (d) To enter onto the Protected Property, in accordance with Section 7 for special access for educational purposes
- (e) To install and display signage on the Protected Property stating that Watershed Land Trust, Inc. has preserved the Protected Property in perpetuity
- (f) To enroll said property in governmental and non-governmental conservation programs including but not limited to the Continuous Conservation Reserve Program (CCRP). Grantee as either principal or agent for Grantor will be responsible for the installation, maintenance and cost associated with said program(s) and will also be entitled to payments, whether continuous or not, related to said program(s). Grantor agrees to assist by executing whatever required documents are necessary to enable the terms of this paragraph

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 Sections 4.4, 4.7, 4.8, 4.9, 4.10 and 4.13. 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.
- 3.2 **Subdivision** The Protected Property may not be divided, partitioned, subdivided or conveyed except in its current configuration as a single unit.
- 3.3 **Mining** There shall be no hard rock, sand, gravel or soil mining on the Protected Property.
- 3.4 **Minerals and Gas** There shall be no exploration for, development of or extraction of minerals, gas or hydrocarbons on the Protected Property.
- 3.5 **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. Alteration of topography through excavation, grading and/or placement of fill, except as allowed by the riparian zone compensation plan.
- 3.6 **Watershed and Wetlands** There shall be no damming, impoundment or channelization of the streams or watercourses on the Protected Property, except as allowed in Section 4.7. There shall be no alteration or manipulation of existing ponds, except after consultation with and written permission from the Grantee, pursuant to Sections 5.1 and 5.2 of this Easement. Draining, filling, dredging, diking or other alteration of any wetland areas is also prohibited.
- 3.7 **Topography** There shall be no ditching, draining, diking, filling, excavation, 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 except as allowed in Section 4.7, 4.8, 4.9, and 4.10. Exposed rock and rock outcrops

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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 in Section 4 10

3 9 **Dumping** There shall be no dumping of trash, garbage, hazardous or toxic substances or other substance or material on the Protected Property There shall be no temporary or permanent storage of unsecured material

3 10 **Roads** There shall be no building of new roads or creation of impervious surfaces involving excavation of the surface or establishment of other rights-of-way on the Protected Property

3 11 **Plant Removal and Introduction** Excavation and/or removal of native plants in the Forest and Riparian Areas is prohibited No non-native trees, grasses or other plant species shall be planted in the Forest and Riparian Areas

3 12 **Timber Harvest** There shall be no commercial timber harvest from the Protected Property

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 plants 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 except as allowed in Section 4 11

3 14 **Reptiles and Amphibians** There shall be no removal of native reptiles and amphibians from the Protected Property

3 15 **Vehicles** Except as otherwise provided in this Easement, 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 16 **Commercial Activities** Commercial activities shall not be permitted on the Protected Property either by Grantors, Grantors' agents, or Grantors' personal representatives, heirs, successors, and assigns Commercial recreational activities are prohibited

3 17 **Animal Confinement** There shall be no commercial confinement facilities for livestock, swine or poultry on the Protected Property

4 **GRANTORS' RESERVED RIGHTS** Grantors reserve to themselves, and to their personal representatives, heirs, 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 purpose 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

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notice is provided to the Watershed Land Trust in accordance with Section 14 below

- 4 2 **Timber** Cutting of trees and woody shrubs may be accomplished to maintain the character of the Protected Property to maintain fences, to keep permitted pathways and trails open and to prevent invasion of woody plants on the Agricultural Area. Clearing of brush, fallen trees and limbs are allowed. Trees cut for authorized purposes may be utilized for personal use as firewood. Grantors may, after consultation with and written permission from the Grantee pursuant to Sections 5.1 and 5.2, add natural surface recreational trails in the Forest Area. Grantors may maintain the additional and existing natural surfaces of the recreational trails located within the Forest Area.
- 4 3 **Fences** Grantors shall be responsible for complying with Kansas fence laws. Grantors may construct, repair, replace, maintain, improve or remove any additional fencing as the Grantors deem necessary for agricultural purposes and to manage or secure the Protected Property.
- 4 4 **Signs** Grantors 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. In order to protect the Conservation Values for which this Easement is granted, Grantor agrees to consult with Grantee before opening the land to 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 carry out activities associated with agriculture use and property maintenance, to remove trees and shrubs in order to maintain the character of the Protected Property, and golf carts or other small vehicles for giving tours of the Protected Property and for educational use. Use of permitted vehicles should, however, be in a manner that will minimize impact on vegetation and generally be confined to the driveways and a few trails and pathways when and where feasible.
- 4 7 **Restoration** The Grantor may restore the Agricultural Area to replanted native prairie, the Forest Area to forest and appropriate portions of Protected Property to wetlands and may make improvements in the Riparian Area for the purpose of improving water quality, any such restoration or improvement after consultation with and written permission from the Grantee pursuant to Sections 5.1 and 5.2.
- 4 8 **Existing Structures** The following is a complete list of all existing structures and improvements located on the Protected Property as of the date of this Easement (the approximate location of each structure is depicted in the BDR). The Grantor may maintain, modify, restore and replace the existing structures on the Protected Property, if any, so long as they are identified in the BDR. Grantor reserves the right to build an additional sewer lagoon on the protected property (similarly engineered to the three existing lagoons adjacent to the protected property as depicted in the attached Figure 3). The location of the new fourth lagoon would be substantially in the location as depicted in Figure 3.

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- 4 9 **Recreational Uses** Grantor, and its licensees and invitees, may make normal and customary non-commercial recreational uses of the Protected Property, such as horse riding, hiking, hunting and fishing, and disc golf as long as the same does not adversely affect the Conservation Values of the Protected Area. In making such recreational uses Grantor may make use of existing pathways and trails on the Protected Property, and Grantor may establish new trails or pathways as long as the same does not adversely affect Conservation Values. The trails or pathways surface will be unpaved with natural surface. The Grantor may install small crossings over ditches, including stone or limited crossing structures after consultation with and written permission from the Grantee, pursuant to Sections 5 1 and 5 2 of this Easement.
- 4 10 **Agricultural Use** Grantors may engage in the following activities: NONE
- 4 11 **Spraying** If used, herbicides shall be applied by spot applications of government approved chemicals 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 ordinances, laws, rules and regulations. Broadcast spraying of herbicides may be permitted on the Agricultural Area.
- 4 12 **Composting** Compost organic matter may be generated on the Protected Property so long as it is in accordance with generally accepted best management practices ("BMP") of biodegradable waste or garbage. Biodegradable is defined as capable of being broken down into innocuous products by the actions of micro-organisms. Provided that such composting is in compliance with all applicable laws, rules and regulations.

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 specified in Section 4 that may have a material adverse impact on the Conservation Values of the Protected Property. Also, Grantors agree to notify Grantee and obtain approval prior to undertaking activity covered by Sections 4 7, 4 9, and 4 10 or any enlarging or replacing of any structure whatsoever on the Protected Property. Whenever notice is required, 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 purpose of this Easement.
- 5 2 **Grantee's Approval** Where Grantee's approval is required as set forth in Section 5 1, 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 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

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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 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 restrictions of this Easement, and
- (b) **Participation** The mediator may meet with the parties and their counsel jointly or individually. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator, and
- (c) **Confidentiality** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party, and
- (d) **Time Period** Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute, and
- (e) **Costs** The costs of the mediator shall be borne equally by Grantors and Grantee, the parties shall bear their own expenses, including attorneys' fees individually.

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 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.

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- 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, fails to begin curing such violation within the thirty (30) day period, or fails 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 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, Grantees 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 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, estoppels, or prescription.

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- 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 Watershed 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** 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 government permits and approvals for any activity or use permitted by this Easement, and all such activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations and requirements. Grantors shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.
- 8.2 **Taxes** Grantors shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.
- 8.3 **Representation and Warranties** Grantors represent and warrant that, after reasonable investigation and to the best of their knowledge:
- (a) No substance defined, listed, or otherwise classified pursuant to any environmental act as solid, hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Protected Property, and
 - (b) There are not now any underground storage tanks located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Protected Property, and
 - (c) Grantors and the Protected Property are in compliance with all federal, state, and local laws, regulations and requirements applicable to the Protected Property and its use, and

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- (d) There is no pending or threatened litigation in any way affected, 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 Grantors might reasonably expect to form the basis for any such proceeding, investigations, notices, claims, demands, or orders
- (f) Grantors hereby warrant and represent that the Grantors are seized of the Protected Property in fee simple and have good right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances and that Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Easement

- 8 4 **Removal and Remediation** If, at any time, there occurs, or has occurred, a release, threatened release, or presence in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any environmental act as solid, hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantors agree to take all steps necessary to assure its containment and/or removal and remediation, including any cleanup that may be required
- 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 indemnity, 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 or gross negligent 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,

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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 Sections 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. 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 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 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 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

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therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Section 9.2.

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

10 **AMENDMENT** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors 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 Sumner County, Kansas.

11 **SUBORDINATION** Grantors represent and warrant, at the time of the conveyance of this Easement, the Protected Property is not subject to a mortgage. If there is an existing mortgage, Grantors shall be required to obtain from the holder of said mortgage a subordination agreement, in a form acceptable to Grantee, which the lender subordinates its 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 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 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

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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 paragraph 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 therefor.

16 NOTICES Any note, 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:

City of Oxford
Betty Oliver, City Clerk
115 South Sumner
Oxford, KS 67119
620-455-2223

To Grantee:

Watershed Land Trust, Inc.
7211 W 98th Terr #140
Overland Park, KS 66212

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 Sumner County, Kansas, and may re-record it at any time as may be required to preserve its rights in this Easement.

18 GENERAL PROVISIONS

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- 18 1 **Controlling Law** The interpretation and performance of this Easement shall be governed by the laws of the State of Kansas
- 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 affect the purpose of this Easement and the policy and purpose of Kansas Statutes Annotated
- 18 3 **Severability** If any provision of this Easement, or the application thereof to any person or circumstances 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 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 "Grantors" and "Grantee" wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, 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
- 18 11 **Representation** Grantors represent and warrant that City of Oxford is a Municipality duly organized under Kansas Law and it is duly authorized to execute, deliver and perform this Easement, that all action requisite for the execution, delivery and performance of this Easement by City of Oxford has been duly and effectively taken that the execution, delivery and performance of

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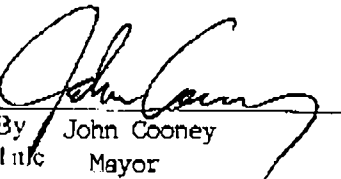
the Easement by City of Oxford does not and will not contravene or conflict with any provisions of the city charter or other agreement or instrument which is binding upon municipality, and this Easement is the valid and binding obligation of the municipality and any successors in interest

19 **Mitigation Banking** Grantors hereby grant all rights, benefits, and more of wetland and/or stream mitigation banking as approved by the U S Army Corps of Engineers as well as any wildlife and/or endangered species mitigation to Grantee and agree to comply with the terms and conditions therewith Grantors further grant all rights, benefits, and more of wetland and/or stream mitigation pursuant to the In Lieu Fee Program as approved by the U S Army Corps of Engineers as well as any wildlife and/or endangered species mitigation to Grantee and agree to comply with the terms and conditions therewith

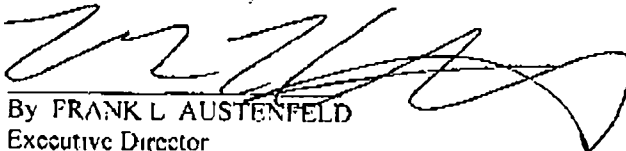
TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever

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

Grantor
City of Oxford


By John Cooney
Title Mayor

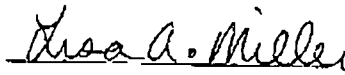
Grantee
Watershed Land Trust, Inc


By FRANK L. AUSTENFELD
Executive Director

CORPORATE ACKNOWLEDGEMENT BY THE CITY OF OXFORD

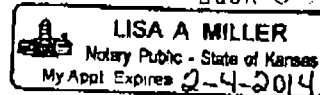
State of Kansas, Sumner County, ss

This instrument was acknowledged before me this 26th day of October, 2011 by John Cooney, Mayor on behalf of the City of Oxford and John Cooney, Mayor duly acknowledged the execution of the same as the act and deed of said municipality


Lisa A Miller

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NOTARY PUBLIC

My Commission Expires

2-4-2014

CORPORATE ACKNOWLEDGEMENT BY THE WATERSHED LAND TRUST, INC

State of Kansas, Johnson County, ss

This instrument was acknowledged before me this 14th day of November, 2011, by Frank Austenfeld, Executive Director of Watershed Land Trust, Inc., a non-profit Kansas corporation and Frank Austenfeld duly acknowledged the execution of the same as the act and deed of said corporation

A handwritten signature in cursive script that reads "Rachel A. Singleton".
NOTARY PUBLIC

My Commission Expires



2-11-14

RACHEL A SINGLETON
Notary Public
State of Kansas
My Appt Exp 2-11-14

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<p>Legend</p> <p> Reserved Use For 4th Lagoon</p> <p> Approximate Easement Boundary</p> <p>0 500 Feet</p> <p>State of Kansas, Sumner County SS Filed for record on the <u>29th</u> Day of <u>November</u>, 2011 A.D. at <u>8.00</u> o'clock <u>PM</u> and recorded in photo book <u>860</u> at page <u>290</u> fees \$ <u>76.00</u></p> <p><u>Joyce A. Lowe</u> Joyce A. Lowe, Register of Deeds</p> <p>Source: http://www.kanregis.org/</p>	<p>Watershed Land Trust Easement Oxford, Kansas</p> <p>Figure 3 Reserved Use For 4th Lagoon</p> <p>THE WATERSHED INSTITUTE AND LAND TRUST</p>
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