

Deed Example for FRPP

**Example FRPP Conservation Easement Deed – 2008 Farm Bill
United States not a Grantee, Right of Enforcement, not Contingent Rights of the United
States or Rights of the United States Language
STILL REQUIRED: Recognition of FRPP, HEL Conservation Plan Requirement, General
Indemnification, Environmental Warranty, Acceptance of Deed by the United States
[With notations to be removed before recording]**

CONSERVATION EASEMENT

THIS GRANT OF A CONSERVATION EASEMENT is made and entered this ____ day of _____, 2010, by (name of landowner) _____, (hereinafter referred to as "Grantor"), having an address at, _____, (name of cooperating entity) _____ a (SELECT ONE: non-profit corporation, or state, Tribal or local government), whose address is _____ (hereinafter referred to as the "Grantee"), and the United States of America ("United States"), acting by and through the United States Department of Agriculture ("USDA"), Natural Resources Conservation Service ("NRCS") on behalf of the Commodity Credit Corporation as its interest appears herein. The Grantee and the Grantor are hereinafter referred to as the "Parties".

Exhibits to this Conservation Easement include the following:

- Exhibit A Legal Description of Protected Property
- Exhibit B Site Description and Map of the Protected Property

RECITALS:

A. **PROTECTED PROPERTY.** Grantor is the owner in fee simple of approximately (insert number of acres) acres, more or less of real property in (insert name of county) _____ County, (insert name of state) _____, which is legally described in **Exhibit A** and depicted in **Exhibit B** attached hereto and incorporated by reference herein ("**Protected Property**").

B. **CONSERVATION VALUES.** [Note: EXAMPLE OF STATEMENT OF CONSERVATION VALUES – MUST ADAPT TO EACH PARCEL] The Protected Property, in its present state, has significant [natural, aesthetic, scientific and educational values as a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem,"] as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder (collectively, "**Conservation Values**"). Such Conservation Values and the Protected Property's state of improvement are documented in a Baseline Documentation Report as described further below.

In particular, the Protected Property lies within the Flint Hills Landscape and includes, as components of its natural values, soils of statewide importance (approximately 97 percent of the total acreage of the Protected Property), native tallgrass prairie and grassland birds and other fauna associated with tallgrass prairie habitats. The three percent of the property not in tallgrass prairie consists of earthen watershed dams and water. The Flint Hills Landscape is a diverse and productive landscape of tallgrass prairie on gently-sloping limestone and chert hills, and an area of biological and agricultural significance. Of the 142 million acres of tallgrass prairie that once

covered the American heartland, less than 5 percent is left. The Flint Hills encompasses the single largest tallgrass prairie landscape remaining in North America, with more tallgrass prairie remaining in the Flint Hills than in all the other prairie states and provinces combined. Moreover, the Flint Hills supports dozens of rural communities and hundreds of working ranches. The Grantee has identified this unique landscape as a priority conservation area.

Approximately 90 native grass species are found in the Flint Hills, with big bluestem, little bluestem, Indian grass, switchgrass, eastern gamagrass, and sideoats grama being some of the characteristic species. The 500+ native broadleaf prairie plant species (herbaceous forbs) documented from the Flint Hills are important for maintaining the ecological health of the prairie's natural communities.

The Flint Hills is important for both resident and migratory grassland bird species. For example, the Flint Hills is the most extensive lekking area for the Greater Prairie Chicken in North America. Since prairie chickens are sensitive to fragmentation, preserving the Flint Hills as an intact landscape is critical for the long-term survival of this species. Further, the Flint Hills is one of the few remaining places where the Topeka shiner, a small minnow found in high quality prairie streams, persists. Because the Topeka shiner is not threatened by normal ranching practices, maintenance of native prairie watersheds through continued best-management ranching practices is consistent with the survival of this species.

In summary, the Protected Property is largely unfragmented, consists of approximately 1,695 acres of the region's characteristic tallgrass prairie community type, Flint Hills Tallgrass Prairie, providing high quality habitat for several grassland bird species, such as the Greater Prairie-Chicken.

C. **EXISTING USES.** The Protected Property is currently used for cattle grazing. Improvements on the Protected Property are related to cattle grazing, including fences, ponds, and access roads. The Conservation Values of the Protected Property have not been and are not likely to be adversely affected, to any substantial extent, by the use of the Protected Property for grazing of cattle or native grazing animals, as authorized in this Conservation Easement.

D. **QUALIFIED ORGANIZATION.** Grantee is a non-profit corporation created to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes and is an organization qualified under Section 170(h) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder, to receive qualified conservation contributions.

Grantee is also an organization which is qualified to receive funds under the Farm and Ranch Lands Protection Program ("FRPP"), 16 U.S.C 3838h and 3838i, which is administered by the Natural Resources Conservation Service ("NRCS"), an agency under the United States Department of Agriculture ("USDA," also generally referred to herein as the "United States"), as part of the cost of acquiring this conservation easement, in accordance with the cooperative agreement between the United States of America, Commodity Credit Corporation and Grantee, Agreement no. _____.

It is the purpose of FRPP to purchase interests in land in order to protect prime, unique and other important agricultural soils by preventing the conversion of soils to non-agricultural uses.

GRANT OF CONSERVATION EASEMENT:

For and in consideration of the facts above recited and of the mutual covenants, terms, conditions, and restrictions herein contained and pursuant to the laws of the State of (insert state name) as and in particular (insert state statute governing easements), and in consideration of the payment of the payment of \$_____ (insert amount paid for the easement) to Grantor, the Grantor hereby grants and conveys unto the Grantee, and their successors and assigns forever a Conservation Easement in perpetuity over the Protected Property consisting of the following terms and conditions (“**Easement**”).

The United States is granted the right of enforcement in order to protect the public investment. However, the United States will only exercise those rights as specifically set forth below.

Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the **[Tribe/State/County/Local Government/Non-governmental Organization]** fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

1. **PURPOSE.** It is the purpose of this Easement to assure that the Protected Property will be retained forever substantially unchanged from its present natural condition as (type of land use/land cover), and its present aesthetic, 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 activities that are consistent with the purpose of this Easement.

2. **PROHIBITED USES/RESTRICTIONS.** Any activity on or use of the Protected Property inconsistent with the purpose of this Easement is prohibited. Without limiting the applicability of the foregoing, the following activities and uses are expressly prohibited except as provided in paragraph 3 below:

2.1. **Agricultural Activity.** The Protected Property shall not be converted to non-agricultural use. The recreation, open space, natural area preservation and/or restoration uses authorized under the terms of this Easement shall not be considered as conversion to non-agricultural use.

As a condition of receiving funding from the Farm and Ranch Lands Protection Program, and as required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, Grantor’s heirs, successors or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan for highly erodible lands (HEL) in consultation with NRCS and the Grantee and approved by the Conservation District. This Conservation Plan shall be developed using the standards and specifications of the NRCS Field

Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Conservation Easement. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS and the Grantee shall each have the right to enter upon the Protected Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply, NRCS will inform Grantee of the Grantor's noncompliance. Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Conservation Plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for HEL are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

2.2. Non-Agricultural Commercial Activity. There shall be no industrial, commercial, or for-profit recreational activity undertaken or allowed on the Protected Property. No right of passage shall be granted or retained across or upon the Protected Property if that right of passage is used in conjunction with such prohibited activities.

2.3. Structures. There shall be no construction or placing of any house, garage, barn or other building, tennis or other recreational court, golf course, landing strip, mobile home, swimming pool, fence or sign (other than those permitted or required by Grantee for appropriate management, prevention of hunting or trespass, etc.), asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, wind turbine, automatic yard light (except motion detection lights) or related structures, or any other temporary or permanent structure or facility on the Protected Property except as authorized pursuant to paragraph 3.

[NOTE: THE STRUCTURE PARAGRAPH IS APPROPRIATE FOR PARCELS WITH LARGE OPEN SPACES AND MINIMAL INFRASTRUCTURE. FOR PROPERTIES WITH INFRASTRUCTURE, SEE THE EXAMPLE LANGUAGE BELOW. FRPP TYPICALLY ALLOWS REPLACEMENT AND REPAIR OF BUILDINGS AND CONSTRUCTION/PLACEMENT OF NEW BUILDINGS TO SUPPORT THE AGRICULTURAL OPERATION UP TO A STATED IMPERVIOUS SURFACE LIMIT. ALL EXISTING AND NEW STRUCTURES MUST BE WITHIN DESIGNATED BUILDING ENVELOPES IDENTIFIED AND LOCATED ON A DRAWING ATTACHED AS AN EXHIBIT AND EITHER SURVEYED (PREFERRED) OR IDENTIFIED BY GPS COORDINATES ON THE DRAWING. THE LANGUAGE

PROVIDED BELOW MAY NEED TO BE TAILORED TO ACCURATELY ADDRESS THE PARTICULAR PROPERTY YOU ARE TRYING TO PROTECT.]

Sample wording for handling structures is below:

2.3. Structures. There shall be no construction or placing of any house, garage, barn or other building or improvement, tennis or other recreational court, golf course, landing strip, mobile home, swimming pool, fence or sign (other than those permitted herein), asphalt, concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, wind turbine, automatic yard light (except motion detection lights) or related structures, or any other temporary or permanent structure or facility on the Protected Property except as provided for in subparagraphs (a) through (e) below or reserved in paragraph. Before undertaking any placement or construction that requires advance permission, the Grantor shall notify Grantee and obtain written permission. All construction or reconstruction is subject to all applicable zoning regulations and must be consistent with permits required by and issued by _____ County under its laws and ordinances for such construction activities.

(a) *Structures & Improvements* – Structures, improvements, paved roads and other impervious surfaces located on the Protected Property, including those existing on the date of this Easement, as indicated in the **Baseline Documentation Report**, shall not exceed 2 percent of the total area of the Property. Impervious surface is defined as any material which covers land and inhibits the percolation of water directly into the soil, including, but not limited to, buildings, roofing, the area covered by permanent or nonpermanent structures, macadam and pavement, concrete, paved and stone driveways, roads, and parking areas, including proposed structures that are either permanent or temporary.

Existing structures, including agricultural structures and improvements, may be repaired, reasonably enlarged, and replaced at their current locations within the "Farmstead Area," as shown on Exhibit B, without further permission from the Grantee. New buildings, including barns, sheds, and other structures and improvements to be used primarily for agricultural purposes (including the processing or sale of farm products predominantly grown or raised on the Property) may be built on the Property without any further permission of Grantee provided they are located in the "Farmstead Area."

Any new agricultural buildings, structures or improvements proposed for locations outside the "Farmstead Area", except for fences and small agricultural structures permitted under paragraph 3 below, may be built only with the advance written permission of the Grantee. The Grantee shall give such permission within a reasonable time if it determines that the proposed building, structure, or improvement would not diminish or impair the Conservation Values of the Protected Property, is not reasonably locatable within the existing Farmstead Envelope, and is not otherwise be inconsistent with this Easement.

(b) *Farm Support Housing* – No more than one (1) single - or multi-family – dwelling to house farm tenants, employees or others engaged in agricultural production on the Protected Property may be built or placed on the Protected Property without any further permission of the Grantee, provided the dwelling is less than 1,000 square feet in floor size and it is located within

that area identified and marked as the “Farmstead Area” identified on Exhibit B. At the time that construction of such structure is to commence, Grantee shall be notified so that its records can be updated. **[Only use this provision if requested by the Grantor/landowner]**

(c) *Single-Family Residential Dwellings* – One residential dwelling exists on the Property within the Farmstead Area, and is depicted as “Existing Residence” on Exhibit B. All appurtenant structures (garage, sheds) shall be contained within the “Farmstead Area.” No other residential dwelling may be built on the Protected Property.

(d) *Recreational Improvements*. No recreational improvements are permitted. **[Note: Sometimes we do allow personal, non-commercial recreational improvements in the Farmstead Area such as a pool or tennis court associated with the personal residence. If the Grantor requests this kind of reservation, language permitting such limited use would need to be added to paragraph 3 below and referenced here.]**

(e) *Utility Services and Septic Systems* – Installation, maintenance, repair, replacement, removal, and relocation of electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve improvements on the Protected Property permitted herein, and the right to grant easements over and under the Property for such limited purposes, is permitted, provided that the impact of such installation and maintenance on the Conservation Values is limited to the greatest extent possible. Grantors shall not permit or grant easements for utility transmission or distribution facilities or systems without the written consent of the Grantee and the United States. Maintenance, repair or improvement of a septic system(s) or other underground sanitary system that exists on the Protected Property at the time of this Easement, or the construction of a septic or other underground sanitary system, for the benefit of any of the improvements permitted herein, is permitted. All other utilities are prohibited on the Protected Property including, but not limited to, cellular communication towers or structures.

2.4. Subdivision. The Protected Property may not be divided, partitioned, subdivided or conveyed except in its current configuration. **[Note: if the property is made up of several contiguous parcels this language can be changed to prohibit the separate conveyance of those legal parcels. This will minimize fragmentation and future administrative burden].**

2.5. Mining. There shall be no mining, drilling, exploring for or removal of minerals from, on or under? the Protected Property.

2.6. Topography. There shall be no ditching, trenching, draining, diking, filling, excavating, removal of topsoil, sand, gravel, rock or other materials (including the removal of substratum from streambeds), or any change in the topography of the land in any manner except in conjunction with activities otherwise specifically authorized herein and in accordance with any Conservation Plan and applicable governmental regulations.

2.7. Water. There shall be no manipulation or alteration of creeks, streams, surface or subsurface springs or other bodies of water or the shorelines thereof, except for those

manipulations or alterations designed to benefit the agricultural operation as set forth in paragraph 3 below, and consistent with the Conservation Plan, if applicable. **[Note to Western states: work with your local OGC attorney to incorporate appropriate water rights language in the deed to insure sufficient water rights are available to maintain the conservation values.]**

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

2.9. Roads and Impervious Surfaces. There shall be no building of new roads or other rights of ways except for unpaved paths and trails consistent with the preservation of the Protected Property. Existing unpaved roads may be maintained but shall not be widened or improved, except as permitted under paragraph 3 below. **[Note: If the property has existing paved roads, you will need to modify to acknowledge such paved roads and specifically permit their maintenance. We try to limit paving.]**

2.10. Vehicles. There shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles (ATVs) or other types of motorized recreational vehicles on the Protected Property, except as necessary to carry-out activities otherwise allowed by this Easement. Cars, trucks, and other farm and ranch vehicles shall not be considered as recreational vehicles when used for the agricultural purposes allowed by this Easement. All permitted vehicle use shall be conducted in a manner that minimizes damage to the Conservation Values of the Protected Property.

2.11. Plant Removal and Introduction. Except as permitted under paragraph 3.10 below, there shall be no excavation and/or removal of native plants on or from the Protected Property except for those designated as noxious weeds or considered to be an invasive woody plant species, or when, based on consultation with and written permission from Grantee, it is agreed that excavation and/or removal of other types of native plants would enhance the Conservation Values of the Protected Property. Grazing and uprooting of native plants by livestock or removal of native species by other agricultural range practices that do not significantly compromise the Conservation Values of the Protected Property shall not be considered excavation or removal. The planting or overseeding of trees, grasses or other plant species is prohibited on the Protected Property without the prior written approval of the Grantee. **[Note: You may not need this in your area. This provision is meant to protect native grasses, but you may not have similar concerns with invasive plants. If that's the case, then don't include this provision in your deed.]**

2.12. Density. Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. The parties have extinguished the development rights. No development rights that have been encumbered or

extinguished by this Easement shall be transferred to any other lands pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

3. **GRANTOR'S RESERVED RIGHTS.** The Grantor reserves for himself/herself, Grantor's heirs, successors and assigns, all rights as owners of the Protected Property to use the Protected Property for all purposes that are not expressly prohibited herein and are not inconsistent with this Easement. Without limiting the applicability of the foregoing, the following rights are expressly reserved:

3.1. Conveyance. Grantor may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance is subject to this Easement and written notice is provided to the Grantee in accordance with paragraph 6.6 below.

3.2. Haying and Grazing. The Protected Property may be used for haying and grazing livestock in a manner that will: (a) maintain native prairie plant and animal communities, (b) minimize erosion, (c) minimize invasion by exotic plants by retaining healthy vegetative cover, (d) protect sensitive aquatic resources such as riparian areas, pools, ponds, springs and seeps, and (e) be consistent with the Conservation Plan, if any. To help achieve these goals, the Grantor agrees to develop a voluntary grazing and haying plan (Management Plan) in consultation with Grantee and NRCS. As a voluntary plan, the decision to follow the Management Plan lies in the sole discretion of the Grantor, provided the Grantor continues to abide by the terms of this Easement, including items (a) through (e) listed above in this Section 3.2. The Grantor, Grantee, and NRCS shall reevaluate the Management Plan at five-year intervals to reflect advances in sustainable grazing and haying practices. In developing the Management Plan, the parties will ensure that the terms of the Management and Conservation Plans, if any, are consistent. **[Note: May need to be redrafted to permit other ag operations when the primary activity is not grazing. Alternate example language is provided below.]**

3.2. Agricultural Operations. The Protected Property may be used for agricultural production, including cultivation of row crops, hay, pasture, and range; raising of poultry and livestock, breeding or boarding of animals, horticulture, apiaries, viticulture and forestry.

3.3. Fences and Other Similar Structures. Grantor may, but shall not be obligated to, repair, replace, maintain, improve or remove any fence or corral located on the Protected Property as of the date of this Easement. The Grantor may construct, repair, replace, maintain, improve or remove additional fencing as the Grantor deems necessary to secure the Protected Property, and as required for permitted grazing of livestock on the Protected Property. Upon the prior written consent of the Grantee, which consent may be given or withheld in the Grantee's sole discretion, Grantor may also construct, repair, replace, maintain, improve or remove small structures and corrals necessary for the agricultural and ranching uses of the Protected Property as permitted herein, such as for the watering, feeding, handling and temporary shelter of livestock.

3.4. Water for Agricultural Purposes. To the extent required for agricultural purposes, including grazing of livestock and crop irrigation on the Protected Property, Grantor may drill water wells, make irrigation improvements, or make improvements to existing stock ponds. New impoundments or expansions of existing impoundments are permitted only with the written

permission of the Grantee. Such alterations shall be made in a manner that does not adversely affect water quality or quantity, and minimizes negative impacts to soils. Water-pumping windmills, solar-power water pumps or other non-intrusive water pumping systems may be used to provide ground water to livestock and irrigation for crops.

3.5. Roads. In order to prevent erosion and soil loss, Grantor may relocate existing unimproved pasture roads/trails on the Protected Property, provided their total number and cumulative length does not increase and the disturbance to soils is minimized. Existing pasture roads/trails are identified in the Easement Documentation Report (defined in Section 6.2 below). Abandoned roads shall be returned to native vegetation cover, either by letting natural succession occur or by replanting with appropriate, native species (based on soil type) using local ecotypes.

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

3.7. Hunting and fishing. Grantor, Grantor's invitees, licensees, and lessees may hunt and fish for native or naturalized species on the Protected Property in compliance with all state and federal laws and regulations.

3.8. Signs. Grantor may place on the Protected Property interpretive signs, such as signs identifying that the Protected Property is protected by this Easement, or signs identifying prairie habitat improvements, as well as "no hunting," "no trespassing" or similar signs.

3.9. Preservation. Grantor may, but shall not be obligated to, undertake activities necessary to maintain or enhance the Conservation Values of the Protected Property, as identified in paragraph B of this Conservation Easement and in the Easement Documentation Report (defined in Section 6.2 below). Any restoration or enhancement allowed pursuant to this provision must be consistent with the Conservation Programs Manual (CPM) Part 519.64K that is in effect at the time this Conservation Easement is granted.

3.10 Timber Resources. Grantor may selectively harvest timber resources from the Protected Property for personal or commercial use. Such selective harvest shall be conducted in a manner consistent with the purposes of this Conservation Easement that minimizes the impact on the Conservation Values of the Protected Property, and in accordance with all other terms and conditions of this Conservation Easement. **[Note: if commercial harvest is permitted on your property, you will need to incorporate a timber plan completed by a forester into your deed terms.]**

4. **RIGHT OF ENFORCEMENT OF THE UNITED STATES OF AMERICA.**
Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the **[Tribe/State/County/Local Government/Non-governmental Organization]** fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the

Secretary.

5. RIGHTS AND REMEDIES of GRANTEE AND THE UNITED STATES. In order to accomplish the conservation purposes of this Easement, the Grantee shall have the following rights and remedies:

5.1. Remedies. In the event that Grantee becomes aware of a violation of the terms of this Conservation Easement, Grantee shall give notice to the Grantor, at Grantor's last known post office address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition. Failure by the Grantor to cause discontinuance, abatement or such other corrective action as may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to enforce by proceedings at law or in equity the provisions of this Easement including, but not limited to, the right to require the restoration of the Protected Property to its condition at the date of this Easement, subject to the reserved rights of the Grantor set forth herein. Grantee, or its successors or assigns, shall not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms and conditions of this Easement by any prior failure to act. 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 5.1 without prior notice to the Grantor or without waiting for the period for cure to expire.

Nothing herein shall be construed to entitle Grantee to institute any enforcement proceeding against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, infestations, natural deterioration, the acts of third parties legally authorized to act by recorded document or other legally established rights or the unauthorized wrongful acts of third persons; provided, however, that the Grantor shall notify Grantee of any occurrence which would adversely affect or interfere with the conservation purpose of the Easement, whether caused by the acts or omissions of the Grantor or third parties.

Grantee shall be entitled to seek expedited injunctive relief to enforce its rights with respect to the Protected Property, and the Grantor waives any bond requirement otherwise applicable to any petition for such relief. Grantee shall have the right to report to regulatory authorities any environmental conditions or any potential or actual violations of environmental laws, including noxious weed laws, with respect to the Protected Property.

In the event either party becomes involved in legal proceedings against the other to enforce such party's respective rights or interests under this Easement, the prevailing party shall be entitled to receive from the non-prevailing party reasonable attorney's fees incurred in connection with any such proceedings. However, the immediately preceding sentence shall not apply to the United States if the United States exercises its rights under this Easement.

5.2. Right of Entry. Grantee shall have the right to enter the Protected Property, in a reasonable manner, with advance notice to the Grantor and at reasonable times, for the purposes of:

- a. Inspecting the Protected Property to determine if the Grantor or Grantor's heirs, successors or assigns, are complying with the provisions of this Easement;

- b. Obtaining evidence for the purpose of seeking judicial enforcement of this Easement;
- c. With Grantor's approval, making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor. Grantor shall be allowed to participate in all such observations and studies; **[Note: On some deeds the partner will not require this and so this provision can be deleted.]**
- d. Posting signs for the purpose of promoting provisions of this Easement, with Grantor's approval as to the size and location of signs;
- e. Removing or controlling invasive plants or animals, at no additional cost to Grantor, and at Grantee's option; such activities by Grantee shall not relieve the Grantor of the responsibility of removing and controlling invasive species in accordance with appropriate federal, state and county laws and regulations;

The United States, acting by and through the Natural Resources Conservation Service, shall have the right to enter the Protected Property after notifying Grantor for the purposes of ensuring that the Conservation Plan required pursuant to paragraph 2.1 is being implemented appropriately, and as needed to exercise its rights pursuant to paragraphs 4 and 5 of this Easement.

All notices to the Grantor under this Section 5.2 may be made either in writing or verbally, at the discretion of the party providing the notice.

5.3. Limitation of Grantee and United States Rights. Nothing contained herein shall give rise, in the absence of a judicial decree, to any right or ability of Grantee or the United States to become the owner, arranger or operator of the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act by exercising physical control over the day-to-day operations of the Grantor, or becoming involved in management decisions of the Grantor regarding the generation, handling or disposal of hazardous substances. **[Note: This paragraph has no practical legal effect, but if the partners want to include something like this, it's ok as long as the FRPP standard environmental warranty clause is also included.]**

5.4. Monitoring. Upon written or verbal notice to the Grantor, Grantee shall have the right, but not the obligation, to monitor the condition of the rare plant and animal populations, plant communities, and natural habitats on the Protected Property. A written summary of findings shall be provided to the Grantor.

5.5. Discretionary Consent. For any activities requiring the Grantee's consent under paragraph 2 or 3 above may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in paragraph 2 are deemed desirable by Grantor and Grantee, Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and requests for permission for activities requiring Grantee's consent under paragraph 2 or 3, shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement. Grantee shall make

reasonable efforts to respond to such written request within 60 days of receipt by Grantee. Grantee may give its permission only if it determines, in its sole discretion, that such activities (a) do not violate the purpose of this Easement and (b) either enhance or do not significantly impair any Conservation Values of the Protected Property. Notwithstanding the foregoing, the Grantor and Grantee have no right or power to agree to any activities that would result in the termination of this Easement or to allow residential, commercial or industrial activities not provided for above. Grantee shall notify NRCS prior to granting consent for activities pursuant to this paragraph.

6. GENERAL PROVISIONS.

6.1. Perpetual Burden. This Easement shall run with and burden the Protected Property in perpetuity and shall bind the Grantor, Grantor's heirs, successors and assigns.

6.2. Easement Documentation. The Grantor and Grantee agree that the natural characteristics, the ecological and aesthetic features, the physical condition, the present uses and the Conservation Values of the Protected Property at the time of this grant are documented in an Baseline Documentation Report, prepared by the Grantee and signed and acknowledged by the Grantor and a representative of Grantee, establishing the condition of the Protected Property at the time of this grant and including reports, maps, photographs and other documentation. A copy of this Report is maintained at the office of the Grantee. Such report may be used by Grantee in any enforcement action.

6.3. Access. Nothing contained in this Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement.

6.4. Assignment. This Easement is in gross and may be assigned or transferred by the Grantee, with the approval of the Secretary of the United States Department of Agriculture, or his or her successors or assigns, and such transfer shall be duly recorded. The Grantee agrees that, if it transfers or assigns its interest in this Easement:

- a. The organization or entity receiving this interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated thereunder; and
- b. The transferee or assignee will be required to carry out in perpetuity the conservation purposes which this Easement was originally intended to advance.

6.5. Dissolution of Grantee. In the event of the dissolution of the Grantee, and the United States declines to exercise its rights under Paragraph 5 above, the Grantee's interest will be assigned only to a public body or to a private non-profit organization which is a qualified organization as described in paragraph 6.4 of this Easement and approved by the United States.

6.6. Subsequent Transfers by Grantor. Unless this Easement is extinguished, as set forth below, the Grantor agrees that the terms, conditions, restrictions and purposes of this Easement will either be incorporated by reference or inserted by the Grantor in any subsequent deed or other legal instrument by which the Grantor divests himself/herself of any interest in all or part of the Protected Property. The Grantor agrees to notify Grantee, its successors and assigns, and the United States of any such conveyance in writing by certified mail within fifteen (15) days after closing.

6.7. Extinguishment. The Grantor agrees that this grant of a perpetual Easement gives rise to a property right, immediately vested in Grantee and the United States, with a fair market value that is equal to the proportionate value that the Easement, at the time of this conveyance, bears to the value of the Protected Property as a whole at the time of conveyance. The proportionate value of Grantee's and the United States' property rights shall remain a constant fractional share of the unrestricted value of the Protected Property. The United States has contributed ___% of the purchase price of the easement, and the United States and the Grantee shall each hold an undivided ___% interest in the conservation easement.

If a subsequent unexpected change in the conditions of or surrounding the Protected Property makes impossible or impractical the continued use of the Protected Property for the conservation purposes described herein, and if the restrictions of this Easement are extinguished by judicial proceedings (including, but not limited to, eminent domain proceedings) and approved by the United States, then upon the sale, exchange or involuntary conversion of the Protected Property, Grantee shall be entitled to a share of the proceeds at least equal to the proportionate value of the Easement described above. In such event, Grantee shall return ___% of those proceeds to the United States, which represents the United States' share of the cost of the Easement. Grantee will use its share of any and all proceeds received for such sale, exchange or involuntary conversion in a manner consistent with the conservation purposes of this Easement or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as that section may be amended from time to time, and in regulations promulgated thereunder.

6.8. Title Warranty. 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 except those of record that have been approved by Grantee and the United States, and that Grantee and its successors and assigns shall enjoy all of the benefits derived from and arising out of this Easement. Any present or future mortgage on the Protected Property has been or will be subordinated to this Easement.

6.9. Hazardous Materials Grantor warrants that he is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantor warrants that he has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property. Moreover Grantor hereby promises to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by the Grantee or the United States to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

6.10. General Indemnification. Grantor shall indemnify and hold harmless Grantee and the United States for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee and/or the United States may be subject or incur relating to the Property, which may arise from, but is not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

6.11 Real Estate Taxes. The Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Protected Property and that Grantee shall have no duty or responsibility to manage or maintain the Protected Property.

6.12. Costs 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 comprehensive general liability insurance coverage. Grantor shall keep the Grantee's interests in the Protected Property free of

any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

6.13. Re-recording. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, the Grantor appoints Grantee as Grantor's attorney-in-fact to execute, acknowledge and deliver any necessary instrument on Grantor's behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

6.14. Definitions. The terms "Grantor" and "Grantee" as used herein shall be deemed to include, respectively, the Grantor, Grantor's heirs, successors and assigns, and Grantee, its successors and assigns.

6.15. Notices. Any notices required under this Easement shall be sent by registered or certified mail, return receipt requested, to the following addresses or such addresses as may be hereafter specified in writing:

GRANTOR

GRANTEE

UNITED STATES

Except as otherwise stated herein, any other notices required by this Easement shall be sent by mail to the following addresses or such addresses as may be hereafter specified in writing:

GRANTOR

GRANTEE

UNITED STATES

6.15. 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 the Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

6.16. 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 58-3810 et seq. and applicable federal law. 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.

6.17. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussion, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

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

6.19 No Merger. Should Grantee acquire fee title to the Protected Property, no merger shall occur and this Easement and the fee shall continue to be managed as separate estates.

TO HAVE AND TO HOLD the above-described Conservation Easement to the use, benefit, and behalf of the Grantee, its successors and assigns, and the United States of America forever.

IN WITNESS WHEREOF, the Grantor has executed this Conservation Easement this _____ day of _____, 2007.

GRANTOR

STATE OF _____)

)ss

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007 by _____.

Notary Public
My Commission Expires:

EXHIBIT A
Legal Description of Protected Property

SAMPLE

EXHIBIT B

Site Description/Map of Protected Property

SAMPLE