

TEMPORARY SET ASIDE AGREEMENT

THIS TEMPORARY SET ASIDE AGREEMENT (this "**Agreement**") is entered into and effective this 5th day of June, 2008, by Gerald & Sharon Dwyer, husband and wife, (the "**Property Owner**"), having an address of 959 E 1100 Road in favor of the City of Lawrence (the "**City**"), having an address at 6 E 6th Street, Lawrence, Kansas 66044 and Douglas County Kansas (the "**County**"), having an address at 1100 Massachusetts, Lawrence, Kansas 66044 (the City and the County are referred to individually as a "**Beneficiary**" and collectively as the "**Beneficiaries**").

RECITALS

WHEREAS, Property Owner is the owner of certain real property, legally described in **Exhibit A**, which is located in Douglas County, Kansas (the "**Protected Property**"), a map or schematic of which is shown in **Exhibit B**;

WHEREAS, the Protected Property possesses natural resources and environmentally sensitive areas which are identified in Section 20-810(j) of the Subdivision Regulations for Lawrence and the Unincorporated Areas of Douglas County, Kansas, such as Floodways based on FEMA's one-hundred year storm; Floodplains, based on the FEMA's one-hundred year storm; jurisdictional wetlands; stream corridors; prominent natural geographic features with rocky outcroppings; stands of mature trees or individually significant mature trees; and other environmental, geographical or historical characteristics. The subject property has been subdivided through the (Cluster) Certificate of Survey process and the portions of the property containing (list the features which apply here) have been designated on the Certificate of Survey and are protected through this Temporary Set Aside Agreement as required in Section 20-[[804(c)(2)(ii)(a) or 805(c)(2)(ii)(a)]];

WHEREAS, the specific natural resources, geographical or historical characteristics, and/or environmentally sensitive areas present are documented in an inventory of relevant features of the Protected Property worthy of protection, and are attached hereto as **Exhibit C** (collectively the "**Conservation Values**");

WHEREAS, it is desired that the Conservation Values of the Protected Property be preserved and maintained by permitting only uses of the Protected Property that do not significantly impair or interfere with the Conservation Values.

AGREEMENT

The Property Owner hereby voluntarily enters into this Agreement with the Beneficiaries, to protect and preserve the Conservation Values of the Protected Property as follows:

1. PURPOSE. The purpose of this Agreement is to protect and preserve the Conservation Values of the Protected Property. Property Owner intends that this Agreement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Agreement.

2. PROPERTY OWNER'S RESERVED RIGHTS. The Property Owner reserves to the Property Owner, and to the Property Owner's successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in or permit others to engage in, uses of the Protected Property that are consistent with the purpose of this

Agreement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

2.1 Conveyance. Property Owner may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance shall be subject to the terms and provisions of this Agreement.

2.2 Continued Agricultural Use. If one of the Conservation Values for the Protected Property is continued agricultural use, then Property Owner may continue to farm the Protected Property and raise livestock upon the Protected Property in accordance with those Conservation Values, and such agricultural use shall not be construed to be a commercial activity that is prohibited by this Agreement.

2.3 Timber. Cutting of trees and woody shrubs may be accomplished to maintain the character of the Protected Property, to maintain fences, and to prevent invasion of woody plants on the native vegetation; as long as the same does not adversely affect the Conservation Values of the Protected Property. Trees cut for authorized purposes may be utilized for personal use as firewood and shall not be sold commercially.

2.4 Recreational Uses. Property Owner, 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, as long as the same does not adversely affect the Conservation Values of the Protected Property.

2.5 Fences. Property Owner may construct, repair, replace, maintain, improve or remove any additional fencing as the Property Owner deems necessary to secure the Protected Property, as long as done so in compliance with Kansas fence laws.

2.6 Educational Use. Property Owner may make the Protected Property accessible to the public to enjoy the Conservation Values of the Protected Property.

2.7 Vehicles. Motorized vehicles may be operated on the Protected Property to transport educational groups with special needs, to maintain fences, to remove trees and shrubs (if such removal is permitted by this Agreement), and to perform controlled burns (if such controlled burns are permitted by this Agreement and applicable law), all to maintain the character of the Protected Property. Use of permitted vehicles shall, however, be in a manner that will minimize impact on native vegetation and generally be confined to limited trails.

3. RIGHTS OF PROPERTY OWNER. To accomplish the purpose of this Agreement, the Property Owner conveys to the Beneficiaries, in accordance with the procedures set forth in Section 5, the right to take actions to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Agreement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use.

4. PROHIBITED USES. Any activity on or use of the Protected Property inconsistent with the purpose of this Agreement and preservation of the Conservation Values of the Protected Property is prohibited. Without limiting the generality of the foregoing, the following activities and uses are prohibited:

4.1 Structures. There shall be no New Structure (defined hereafter) constructed on the Protected Property. The term “**New Structure**” includes, but is not limited to, a house, mobile or manufactured home, garage, barn, church, or other building, recreational courts or playing fields, landing strip, swimming pool, asphalt, concrete or asphalt pavement, billboard or other sign, antenna, storage tank, utility system, wind turbine, tower, any other temporary or permanent improvement of a similar nature or with similar characteristics. This prohibition shall not extend to the construction, repair, renovation, maintenance, or restoration of existing structures on the Protected Property which contributes to any historical Conservation Values.

4.2 Minerals and Gas Development. There shall be no exploration for, development of or extraction of minerals, gas or hydrocarbons on surface of the Protected Property.

4.3 Soil and Water and Watersheds. Any use or activity that may cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters is prohibited. There shall be no damming, impoundment or channelization of the streams, watercourses, or watersheds on the Protected Property, except pursuant to the rights of a watershed district under K.S.A. 24-1201 *et seq.*, as amended.

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

4.6 Dumping. There shall be no dumping of trash, construction materials, or hazardous or toxic substances on the Protected Property.

4.8 Commercial Activities. Commercial activities other than those expressly provided for in this Agreement shall not be permitted on the Protected Property, either by Property Owner or Property Owner's licensees, invitees, or tenants.

5. BENEFICIARIES' REMEDIES.

5.1 Notice of Violation; Corrective Action. If the Beneficiary having regulatory authority over this Agreement (see Section 14) determines that a violation of the terms of this Agreement has occurred or is threatened, such Beneficiary shall give written notice to Property Owner of this 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 Agreement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by such Beneficiary.

5.2 Injunctive Relief. If Property Owner fails to cure the violation within 30 days after receipt of notice thereof from the Beneficiary having regulatory authority over this Agreement, or under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing such violation within the 30 day period, or fails to continue diligently to cure such violation until finally cured, the Beneficiary having regulatory authority over this Agreement may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to enjoin the violation, by temporary, preliminary and/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 Agreement. Notwithstanding the 30 day

notice required above, if the Beneficiary having regulatory authority, at its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, such Beneficiary may pursue its remedies under this Agreement, including but not limited to seeking temporary, preliminary and/or permanent injunction (*ex parte* as necessary) injunctive relief, without prior notice to Property Owner. The remedies described in this Section shall be in addition to all remedies now or hereafter existing at law or in equity.

5.3 Cost of Enforcement. All reasonable costs incurred by the Beneficiary having regulatory authority over this Agreement in enforcing the terms of this Agreement against Property Owner including, without limitation, costs and expenses of litigation, including expert witness fees and reasonable attorneys' fees, and any costs of restoration of the Protected Property necessitated by Property Owner's violation of the terms of this Agreement, shall be borne by Property Owner; provided, however, that if Property Owner ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

5.4 Waivers. No delay or omission by a Beneficiary in the exercise of any right or remedy upon any breach by Property Owner shall impair such right or remedy or be construed as a waiver. Property Owner hereby waives any defense of laches, estoppel, or prescription.

6. ACCESS. No right of physical access by the general public to any portion of the Protected Property is conveyed by this Agreement.

7. COSTS, LIABILITIES, AND CONTROL.

7.1 Costs, Legal Requirements, and Liabilities. Property Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage.

7.2 Control. Nothing in this Agreement shall be construed as creating any right or ability in either Beneficiary to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Property Owner's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of any applicable environmental law.

8. AMENDMENT. If circumstances arise under which an amendment to or modification of this Agreement is advisable or necessary, Property Owner and the Beneficiaries are free to jointly amend this Agreement. Any such amendment shall be recorded in the Office of the Register of Deeds of Douglas County, Kansas.

9. NOTICES. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to any other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Property Owner: Gerald & Sharon Dwyer
959 E 1100 Road
Lawrence, KS 66047

To Beneficiaries: Douglas County, Kansas

Attn: County Administrator
1100 Massachusetts
Lawrence, KS 66044

and

City of Lawrence
Attn: City Manager
6 East 6th St.; PO Box 708
Lawrence, KS 66044

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

10. RECORDATION. Property Owner, at Property Owner's expense, shall record this instrument in timely fashion in the Office of the Douglas County, Kansas Register of Deeds.

11. COVENANT RUNNING WITH THE LAND. Subject to termination or expiration of this Agreement according to its terms, the covenants, terms, conditions, and restrictions of this Agreement shall constitute a covenant and equitable servitude running with the land and be binding upon Property Owner and the Property Owner's personal representatives, heirs, successors and assigns, and inure to the benefit of the Beneficiaries and their respective successors and assigns. The terms "Property Owner" and "Beneficiaries," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Property Owner and his personal representatives, heirs, successors, and assigns, and each above-named Beneficiary and its successors and assigns. A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in this Agreement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

12. GENERAL PROVISIONS.

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

12.2 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Agreement t, 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 8.

13. TERMINATION. If the Beneficiaries' Subdivision Regulations are amended in the future such that this Agreement would not have been necessary to approve a Certificate of Survey division (as defined in the Subdivision Regulations) involving the Protected Property had the application for approval been made after the effective date of the amendment, any party may terminate this Agreement upon written notice to the others. In the event of a termination of this Agreement, the parties agree to sign an instrument identifying the termination and record it with the Office of the Douglas County, Kansas Register of Deeds.

14. REGULATORY AUTHORITY. The County shall have regulatory authority over this Agreement until such time that the Protected Property is annexed into the jurisdictional boundaries of the City of Lawrence, Kansas, and the City shall have regulatory authority thereafter until this Agreement expires.

15. **EXPIRATION OF AGREEMENT.** The Agreement shall expire on the date that is 2 years after the date the Protected Property is annexed into the jurisdictional boundaries of the City, unless further action is taken by either the City and the Property Owner to secure its continuance.

IN WITNESS WHEREOF, Property Owner and Beneficiaries have executed this Agreement as of the day and year first above written.

Property Owner:

Gerald Dwyer
Gerald Dwyer
Gerald Dwyer
Sharon L. Dwyer
Sharon L. Dwyer
Sharon L. Dwyer

Beneficiaries:

Douglas County, Kansas

By: Bob Johnson
Bob Johnson
r Pr Bob Johnson

Title: Chair of Board of County Commissioners

ATTEST:

[Signature]
County Clerk

APPROVED AS TO FORM:

EHA
County Counselor

City of Lawrence, Kansas

By: David L. Corliss
DAVID L. CORLISS
David L. Corliss
Title: City Manager

STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

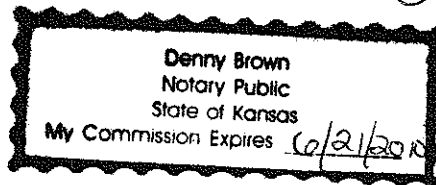
BE IT REMEMBERED, that on this 5 day of June, 2008, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Gerald Dwyer and Sharon Dwyer, known to me to be the same person(s) who executed the foregoing instrument as Property Owner, and duly acknowledged the execution of same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Denny Brown
Notary Public

My commission expires:

6/21/2010



STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this _____ day of _____, 2008, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Robert Johnson, Chair of the Board of Douglas County, Kansas Commissioners, known to me to be the same person who executed the foregoing instrument as a Beneficiary, and duly acknowledged the execution of same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My commission expires:

STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

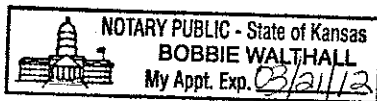
BE IT REMEMBERED, that on this 8 day of June, 2008, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came David L. Corliss, City manager of the City of Lawrence, Kansas, known to me to be the same person who executed the foregoing instrument as a Beneficiary, and duly acknowledged the execution of same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Bobbie Walthall
Notary Public

My commission expires:

03/21/12



SCHEDULE OF EXHIBITS

- A. Legal Description of Protected Property.
- B. Map of Protected Property.
- C. Conservation Values--Inventory of relevant features of the Protected Property worthy of protection.

EXHIBIT A

Beginning at a Rebar with a Douglas County Aluminum disk at the Southeast corner of the Northeast Quarter of Section 33, Township 13 South, Range 19 East of the 6th P.M., Douglas County, Kansas; thence South 88 degrees 03 minutes 25 seconds West, 2661.74 feet to a 1/2" rebar at the Southwest corner of said Northeast Quarter; thence along the West line of said Northeast Quarter, North 01 degrees 49 minutes 21 seconds West, 330.00 feet, to a 1/2" rebar; thence North 88 degrees 03 minutes 25 seconds East, 2661.49 feet to a 1/2" rebar on the East line of said Northeast Quarter; thence along said East line, South 01 degrees 51 minutes 54 seconds East, 330.00 feet to the point of beginning. Together with and subject to covenants, easements, and restrictions of record. Said property contains 20.16 acres, more or less, in Douglas County, Kansas, as shown on survey by Taylor Design Group, P.A., dated March, 2008.

- BUILD OUT PLAN -



beginning at a 1/2" radius the Southwest corner of the Northwest Quarter of Section 33, Township 13 South, Range 18 East of the 6th M., Douglas County, Kansas; thence South 80 degrees 03 minutes 25 seconds West, 2601.74 feet to a 1/2" radius of the Southwest corner of the Northwest Quarter, thence along the West line of said Northwest Quarter, North 01 degrees 49 minutes 31 seconds West, 3350.00 feet, to a 1/2" radius; thence North 89 degrees 03 minutes 25 seconds East, 2661.49 feet to a 1/2" radius on the East line of said Northwest Quarter, thence along said East line the South 01 degrees 49 minutes 31 seconds East, 3300.00 feet to the point of beginning. Containing 25.16 acres, more or less. In Douglas County, Kansas, on claim on money by Toger Denny, P.O. filed January, 1908.

[illegible][illegible][illegible]

There are no fences, gaps, overlaps or known discrepancies between ownership or possession, unless shown.

- [illegible]

Existing Monument as labeled

- 1/2" x 24" Adobe with 10 Clay Soil, Shrapnel TDS 015-07
 Consolidated Center on monument wall
 BSR: Building Setback Line (Proposed-18ft)
 RPS: Residential Development Parcel
 DMA: Immediate Development Area
 P.O.C.: Point of Commencement
 P.O.B.: Point of Beginning
- REFERENCE MAPS:**
 Douglas County Public Works

Douglas County Public Works
Road and Drainage Improvement Pla
Project No. 097611ND

BOARD OF MEMBERS:
Suzanne Moss, AIA
Dr. J.E. Spence, BS-EB
Fred in Public Works Department
George Ho, BS-EB
By E.G. Rogers, BS-EB
Fred in Public Works Department
By Tague Design Group, P.A.
S.J. Marino, Jr. (S-1580)
Fred in Registrar's Office

A breeding of 5 Q14154E was then M.E. 1/4 of Snc. 33-13-14

PARENT TRACT:
As recorded in Deed Book 396 Page 113

An encounter in Direct Book: 354 Page: 132

SITE SUMMARY:

Total Site Acreage ~ 19,502 Acres
Grant of Easement ~ 8,774 Acres
Proposed Additional Cross Access Easement ~ 1,811 Acres
Interchange Development Area ~ 1.61 Acrement, 9.82 bpo
Interchange Development Easement)
Interchange Development Parcel 1 ~ 9.82 Acres
Future Development Area ~ 10,004 Acres



Stephen James Martin, A. 1.5-1200
 & Stephen Jovin Martin II, do hereby certify that I have made or
 had made under my direct supervision the herein described survey
 on the ground in March, 2008 and that said survey meets or
 exceeds current Kansas Minimum Standards adopted by Kansas State
 Board of Technical Professions.