

CONSERVATION EASEMENT

This Conservation Easement is made this 21 day of MARCH, 1989, by City of Lawrence, Kansas, a municipal corporation, 6th and Massachusetts Street, Lawrence, Kansas, hereinafter referred to as "Grantor" and State of Kansas, Department of Wildlife and Parks, Rural Route 2, Box 54A, Pratt, Kansas, 67124, hereinafter referred to as "Grantee".

WITNESS

WHEREAS, Grantor is the owner of certain real property in Douglas County, Kansas, more particularly described as:

All City of Lawrence lands within a corridor on the right bank of the river between River Mile 50.8 and River Mile 51.0 extending from the Ordinary High Water Mark (OHWM) to 50 feet landward of the OHWM and located at the City Wastewater Treatment Plant, and

All City of Lawrence land on the left bank of the river between River Mile 50.8 and River Mile 51.6 lying riverward of the existing flood control levee.

WHEREAS, the property possesses natural value of importance to Grantor, the people of Douglas County, Kansas, and the people of the State of Kansas, and

WHEREAS, in particular, the lands described above are Located within a river corridor currently designated critical wintering habitat for the Bald Eagle by the Kansas Department of Wildlife and Parks pursuant to Kansas Administrative Regulation 23-17-2;

WHEREAS, historical and current use of the described lands for resting, feeding, and foraging by Bald Eagles during winter on an annual basis has been documented by the Kansas Department of Wildlife and Parks and the Kansas Ornithological Society;

WHEREAS, the described lands currently contain stands of native trees suitable for use by Bald Eagles as resting, feeding, and foraging perches;

WHEREAS, the Grantor, in compliance with conditions pursuant to Project Action Permit No. 88-22 issued November 22, 1988, by the Kansas Department of Wildlife and Parks (on file at offices of Grantor and Grantee), must take this action to mitigate adverse impacts for critical Bald Eagle habitat resulting from a riverfront development known as the Kansas River Plaza; and

WHEREAS, the Grantee agrees, by accepting this grant, to preserve and protect in perpetuity the conservation values of the 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 therein, Grantor hereby grants and conveys to grantee a Conservation Easement in perpetuity over the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Easement to assure that the property be retained forever in its natural condition to allow for continued use by Bald Eagles and to prevent any use of the property that will significantly impair or interfere with the conservation values of the property.
2. Rights of Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:
 - a. To preserve, manage, and protect critical Bald Eagle habitat on the property;
 - b. To enter upon the property at reasonable times in order to monitor Grantor's compliance with the terms of this Easement; and
 - c. To prevent any activity or use of the property that is inconsistent with the purpose of the Easement.
3. Prohibited Uses. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
 - (a) Tree trimming or removal without prior approval of the Grantee;
 - (b) Construction of public recreational facilities such as boat ramps, picnic shelters, hiking or jogging trails, or any other improvements designed to cause increased human activity on the property;
 - (c) Construction of residential, industrial, or commercial developments;
 - (d) Removal of sand or other minerals;
 - (e) Construction of levees, jetties, or other structures designed to alter or redirect flow of the river; and
 - (f) An activity on or use of the property inconsistent with the purpose of this Easement.
4. Reserved Rights. Grantor reserves to itself and to its officials, elected and appointed, agents, servants, employees, contractors, successors, trustees and assigns all rights accruing from its ownership of the property, including the right to engage in or permit or invite others to engage in all uses of

the property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. This Easement will not preclude the operation, maintenance, replacement, repair, relocation or removal of Grantor's force main sanitary sewer line(s) with attendant equipment. Grantor's wastewater outfall structure, together with all attendant lines and equipment, or any other utilities located in, upon, under, over or across any portion of the easement granted herein.

5. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cure within sixty (60) days after receipt of notice thereof from Grantee, or the violation cannot reasonably be cured within sixty (60) days, fails to begin curing within the sixty (60) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action in law or in equity in a court of competent jurisdiction to enforce the terms of this Easement.
6. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or 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 Grantor shall impair such right or remedy or be construed as a waiver.
7. Grantee's Obligations. In consideration for the granting of this easement, the Grantee agrees to take steps necessary to preserve and protect lands subject to this easement for the use for which the easement is granted. Should the Grantee fail to fulfill its obligation under the provisions granting the easement, the Grantee hereby agrees to execute a release of the easement and deliver same to the Grantor.
8. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or any change in the property resulting from causes beyond Grantor's control, including without limitation, fire, flood, drought, wind, lightening, storm and earth movement; from Grantor's use of the Easement as permitted and recognized by the terms of numbered paragraph 4 above; or because of any injury to or change in the Easement resulting from actions taken by Grantor to remedy a life threatening situation, or to combat a disaster.

9. Access. No right of access by the general public to any portion of the property is conveyed by this Easement.
10. Easement Review. In the event Bald Eagles should cease to use the property as perching sites for a period of ten (10) consecutive years, for reasons beyond control of the Grantor, the Grantee hereby agrees to review the easement to determine if its continued maintenance will serve the purposes of the grant.
11. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

City Clerk
City of Lawrence
P.O. Box 708
6th and Massachusetts
Lawrence, Kansas 66044-0708

To Grantee:

State of Kansas
Department of Wildlife & Parks
Operations Office
Rural Route 2, Box 54A
Pratt, Kansas 67124

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

12. Recordation. Grantee shall record this instrument in timely fashion in the official records of Douglas County, Kansas, and may re-record it at any time as may be required to preserve its rights in this Easement.
13. General Provisions:
 - a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Kansas.
 - b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of K.S.A. 32-501 thru 510; K.A.R. 23-17-2; and K.S.A. 58-3803 et. seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

- c. Severability. If any provision of this Easement, or the application thereof to any other person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- f. Joint Obligation. The obligations imposed by this easement upon Grantors shall be joint and several.
- g. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and insure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the property.
- h. 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.
- i. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

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

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

CITY OF LAWRENCE, KANSAS,
a municipal corporation,

Attest:

Raymond J. Hummert,
City Clerk

BY:

Robert J. Schumm, Mayor

"GRANTOR"

STATE OF KANSAS,
Kansas Department of Wildlife and
Parks,

BY:

Robert L. Meinen, Secretary

NO. 3951

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INDEXED

"GRANTEE"

State of Kansas, Douglas County, SS.	
Filed and Entered in Vol. <u>431</u>	
Page <u>1450</u>	at <u>3:00</u> o'clock <u>P.</u> M.
1455	
MAY 17 1989	
<u>Dee A. Neusteyer</u>	
By	Register of Deeds
	Deputy

ACKNOWLEDGEMENT

STATE OF KANSAS)
COUNTY OF DOUGLAS)

SS:

The foregoing instrument was acknowledged before me this 21st day of March, 1989, by Robert J. Schumm, Mayor, for the City of Lawrence, Kansas, and attested by Raymond J. Hummert, the Clerk of said city.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Emmeline C. Harlem
Notary Public

My Commission Expires: August 30, 1989

SOUTH BANK

N.W. 1/4 SECTION 32, TWP 12 S, RANGE 20 EAST

NORTH BANK

S.W. 1/4 SECTION 29, TWP 12 S, RANGE 20 EAST

S.E. 1/4 SECTION 30, TWP 12 S, RANGE 20 EAST

ORIGINAL FILED WITH RECORD

431-1455

WARRANTY DEED

THIS INDENTURE made this 12th day of September, 1994, between LRM Industries, a corporation duly organized, Incorporated and existing under and by virtue of the laws of the State of Kansas and having its principal place of business at Lawrence, in the State of Kansas, the Grantor, and the City of Lawrence, Kansas, a municipal corporation existing under and by virtue of the laws of the State of Kansas, Grantee.

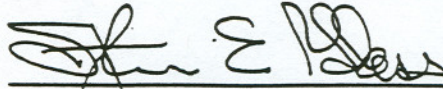
Grantor, in consideration of the sum of six thousand five hundred dollars (\$6,500.00), and other valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey to said Grantee its successors and assigns, all the following described real estate, situated in Douglas County and the State of Kansas, to-wit:

Beginning at a point on the East line of New York Street in the City of Lawrence, Kansas, 283.5 feet North of the Southwest corner of Reserve No. 8; thence East 60 feet; thence North parallel with New York Street to the bank of the Kansas River; thence Westerly along the bank of said River to the East line of New York Street; thence South along the East line of New York Street to the place of beginning, being a part of said Reserve Numbered Eight in the City of Lawrence, in Douglas County, Kansas.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, forever. Provided, that the City may not grant, bargain, sell or convey the above described real estate for a period of time beginning on the date of conveyance from the Grantor to the Grantee and ending twenty-five (25) years from the date of conveyance from the Grantor to the Grantee. Provided, further that the City as Grantee shall hold and use said above described real estate as green space or open space, without any permanent man-made structures which are unnecessary for its use as green space or open space, specifically allowing the erection and maintenance of fences, signs and markers on the premises.

And said Grantor for itself, its successors and assigns, does hereby covenant, promise and agree, to and with said Grantee, that at the delivery of this deed it is lawfully seized in its own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular and the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charge, estates, judgments, taxes, assessments and encumbrances, of whatsoever nature; and that it will warrant and forever defend the same unto said Grantee, its successors and assigns, against Grantor, its successors and assigns, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

LRM INDUSTRIES

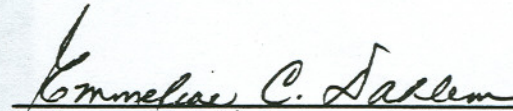


Stephen E. Glass, President

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 12th day of September, 1994, before me, the undersigned, a Notary Public in and for the County and State aforesaid came Stephen E. Glass, President, LRM Industries a corporation existing under and by virtue of the laws of the State of Kansas, who is personally known to me to be said officer, and who is personally known to me to be the same person who executed, as such officer, this instrument on behalf of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my official seal the day and year last above mentioned.



Notary Public

