



Douglas County Register of Deeds
Book: 1071 Page: 1781

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31-13-20 NC

[Above Space Reserved for County Officials]

TEMPORARY SET ASIDE AGREEMENT

THIS TEMPORARY SET ASIDE AGREEMENT (this "Agreement") is made and entered into effective the 9th day of January, 2011 (the "Effective Date"), by and between May-West, L.C., a Kansas limited liability company, having an address of 1921 Quail Run, Lawrence, Kansas 66047 ("Owner"), Douglas County Kansas, having an address of 1100 Massachusetts Street, Lawrence, Kansas 66044 ("County"), and the City of Lawrence, Kansas, having an address of 6 East 6th Street, Lawrence, Kansas 66044 ("City") (County and City are collectively referred to as "Beneficiary").

RECITALS

WHEREAS, Owner is the record owner of certain real property located in Douglas County, Kansas (the "Property"), legally described in **Exhibit A** attached to and, by reference, made a part hereof;

WHEREAS, a portion of the Property, as shown in the map or schematic attached hereto as **Exhibit B** and, by reference, made a part hereof (the "Protected Property"), possesses certain environmentally sensitive areas, as defined in Section 20-810(j) of the Subdivision Regulations for Lawrence and the Unincorporated Areas of Douglas County, Kansas;

WHEREAS, the specific attributes of the environmentally sensitive areas to be protected under this Agreement (collectively referred to as the "Conservation Values" which are noted in Exhibit C) are located on the Protected Property;

WHEREAS, it is desired that the Conservation Values of the Protected Property be preserved and maintained by imposing certain limitations on the permitted use of the Protected Property, all in accordance with the terms and provisions of this Agreement.

MAI

May-West, LC
1921 Quail Run
Lawrence, KS 66047

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AGREEMENT

Pursuant to Section 20-810(j) of the Subdivision Regulations for Lawrence and the Unincorporated Area of Douglas County, Kansas, and so Owner can obtain an approved Certificate of Survey of the Property, Owner and Beneficiary hereby enter into this Agreement 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, while allowing Owner to use the Protected Property consistent with the laws, ordinances, and approved uses applicable to the Protected Property. This Agreement will impose certain use restrictions upon the Protected Property following the Effective Date of this Agreement, until the expiration or sooner termination of this Agreement. The use restrictions set forth in this Agreement shall be and are hereby limited solely to the Protected Property, and nothing herein shall affect the Owner's use of the remaining portion of the Property.

2. **OWNER'S RESERVED RIGHTS.** Owner reserves exclusively to Owner, and to Owner's successors and assigns, all rights, title and interests 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 and the laws, ordinances, and approved uses applicable to the Protected Property. Without limiting the generality of the foregoing, and by way of example and not limitation, the following rights are hereby expressly reserved by Owner, and Owner's successors and assigns, following the Effective Date of this Agreement:

2.1 **Conveyance.** Owner may deed, transfer, dedicate, sell, give, mortgage, pledge, lease or otherwise convey rights in the Protected Property, provided that any such conveyance shall be subject to the terms and provisions of this Agreement.

2.2 **Continued Agricultural Use.** Owner may continue to farm the Protected Property and raise livestock upon the Protected Property, and such agricultural use shall not be construed to be a commercial activity that is prohibited by this Agreement.

2.3 Intentionally Deleted.

2.4 **Recreational Uses.** Owner, and its licensees and invitees, may make recreational uses of the Protected Property (by way of example and not limitation, such as social functions, hiking, hunting, etc.), to the extent consistent with the preservation of the Conservation Values, the Owner's intended use and the laws, ordinances, and approved uses applicable to the Protected Property.

2.5 **Fences.** Owner may construct, repair, replace, maintain, improve or remove any additional fencing as Owner deems necessary to secure the Protected Property.

2.6 Educational Use. Owner may, in Owner's sole and absolute discretion and without obligation, make the Protected Property accessible to the public to enjoy the Conservation Values of the Protected Property.

2.7 Farm Machinery and Vehicles. Farm machinery and other motorized vehicles may be operated on the Protected Property in a manner consistent with and in furtherance of preserving the Conservation Values, the Owner's intended use and the laws, ordinances, and approved uses applicable to the Protected Property.

2.8 Declaration of Restrictive Covenants. Owner may record covenants, conditions, and restrictions that are more restrictive than this Agreement.

3. PROHIBITED USES. Except as expressly provided in this Agreement, 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, Owner agrees as follows:

3.1 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, landing strip, swimming pool, asphalt, concrete or asphalt pavement, billboard or other sign, antenna, storage tank, utility system, wind turbine, tower, or 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.

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

3.3 Soil, Water and Watersheds. Any use or activity that may cause significant soil degradation or erosion, or significant pollution of any water on or about the Protected Property is prohibited. Following the Effective Date of this Agreement, there shall be no new man-made 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. Any damming, impoundment or channelization of the streams, watercourses, or watersheds on the Protected Property existing as of the Effective Date of this Agreement shall not be affected by this Agreement.

3.4 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, other than to provide walking trails or other outdoor amenities that do not require the removal of Conservation Values on the Protected Property. 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.

3.5 Dumping. There shall be no dumping of trash, construction materials, or hazardous or toxic substances on the Protected Property. Nothing herein shall prohibit the collection of refuse and trash consistent with the intended use of the Protected Property, provided that all such refuse and trash shall be routinely collected, stored, and disposed of in a timely and lawful manner.

3.6 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.

3.7 Tree and Vegetation Removal. Cutting or removal of trees or vegetation and undergrowth in the stand of mature trees located within the stream corridor, as illustrated in Exhibit D, attached to and, by reference, incorporated in this Agreement (the "**Wooded Area**") is prohibited except to the extent reasonably necessary to (i) install and maintain fences, (ii) prevent invasion of undesirable undergrowth, (iii) control dead, diseased or dying trees, and (iv) clear sites for the construction of utility services, and related support services to the extent reasonably necessary and consistent with the laws, ordinances, and approved uses applicable to the Protected Property. Nothing in this Agreement shall prohibit Owner from mowing grass, hay, etc., or removing trees or vegetation in the environmentally sensitive area that is not located within the Wooded Area illustrated in Exhibit D. The cutting, pruning, and removal of trees, brush, woody shrubs, and other undesirable undergrowth from the Property prior to the Effective Date of this Agreement, by Owner or Owner's predecessors, shall not be affected by this Agreement.

4. BENEFICIARY'S REMEDIES.

4.1 Notice of Violation; Corrective Action. If Beneficiary determines that a violation of the terms of this Agreement has occurred or is threatened, Beneficiary shall give written notice to Owner of the alleged violation and demand corrective action sufficient to cure the violation.

4.2 Injunctive Relief. If Owner fails to cure the violation within 30 days after receipt of notice thereof from Beneficiary, or fails to commence curing such violation within the 30 day period, if such sure cannot reasonably be cured within the 30 day period, or fails to continue diligently to cure such violation until finally cured, Beneficiary may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement or to enjoin the violation. Notwithstanding the 30 day notice required above, if Beneficiary reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Beneficiary may pursue its remedies under this Agreement, including but not limited to injunctive relief, without prior notice to Owner. The remedies described herein shall be in addition to all remedies now or hereafter existing at law or in equity.

4.3 Waivers. No delay or omission by a Beneficiary in the exercise of any right or

remedy upon any breach by Owner shall impair such right or remedy or be construed as a waiver. Owner hereby waives any defense of laches, estoppel, or prescription.

4.4 Enforcement. Until such time as the Property shall be annexed by City, County shall have the exclusive right to enforce the terms of this Agreement. Following annexation of the Property by City, City shall have the exclusive right to enforce the terms of this Agreement.

5. ACCESS. No license, easement, or other right of physical access by the general public to any portion of the Property or the Protected Property is conveyed by this Agreement.

6. COSTS, LIABILITIES, AND CONTROL.

6.1 Costs, Legal Requirements, and Liabilities. Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to Ownership, operation, upkeep, and maintenance of the Protected Property.

6.2 Control. Nothing in this Agreement shall be construed as creating any right or ability in Beneficiary to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of 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.

7. AMENDMENT. If circumstances arise under which an amendment to or modification of this Agreement is advisable or necessary, Owner and Beneficiary are free to jointly amend this Agreement, but any such amendment must be in writing and signed by both parties. Any such amendment shall be recorded in the Office of the Register of Deeds of Douglas County, Kansas.

8. 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 Owner: May-West, L.C.
 Attn: Michael Flory
 1921 Quail Run
 Lawrence, KS 66047

To County: Douglas County, Kansas
 Attn: County Administrator
 1100 Massachusetts St.
 Lawrence, KS 66044

To City: City of Lawrence, Kansas
Attn: City Manager
6 East 6th Street
Lawrence, KS 66044

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

9. RECORDATION. Planning Staff, at Owner's expense, shall record this instrument in the Office of the Douglas County, Kansas Register of Deeds prior to the recordation of the Certificate of Survey.

10. 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 Owner and Owner's personal representatives, heirs, successors and assigns, and inure to the benefit of Beneficiary and their respective successors and assigns. The terms "Owner" and "Beneficiary," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Owner and its successors, and assigns, and the above-named Beneficiary and its successors and assigns. A party's rights, obligations, and liabilities 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.

11. GENERAL PROVISIONS.

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

11.2 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, 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 7 of this Agreement.

12. TERMINATION. If Owner elects to abandon the permitted uses shown on any approved site plan, terminate the approved plat of the Protected Property, and rezone the Protected Property to an agricultural use, then this Agreement shall terminate automatically, effective on the date such rezoning ordinance is published in accordance with Kansas law. In addition, if Beneficiary's Subdivision Regulations are amended in the future such that this Agreement would not have been necessary to approve a plat or Certificate of Survey land division involving the Protected Property had the application for approval been made after the effective date of the amendment, either party hereto may terminate this Agreement upon written notice to the other. 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.

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

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

OWNER:

May-West, L.C.,
A Kansas limited liability company

By: Michael A. Flory
Michael A. Flory, Manager

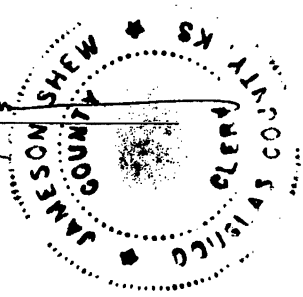
COUNTY:

Douglas County, Kansas

By: Nancy Thellman Jim Flory
Title: Chair of Board of County Commissioners

ATTEST:

[Signature]
County Clerk



APPROVED AS TO FORM:

[Signature]
County Counselor

CITY:

City of Lawrence, Kansas

By: [Signature]
Its: City Manager

ATTEST:

[Signature]
City Clerk

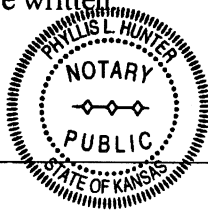
APPROVED AS TO FORM:

[Signature]
City Attorney

STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 29th day of December, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Michael A. Flory, Manager of May-West, L.C., a Kansas limited liability company, known to me to be the same person(s) who executed the foregoing instrument on behalf of said limited liability company, 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



[Signature]
Notary Public

My commission expires: _____

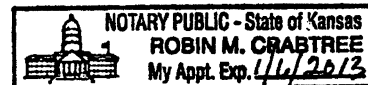
MY COMMISSION EXPIRES:
STATE OF KANSAS) March 19, 2011
) ss
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 17th day of January, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came ~~Nancy Thellman~~, Jim Flory, Chair of Board of County Commissioners of Douglas County, Kansas, known to me to be the same person who executed the foregoing instrument on behalf of Douglas County, Kansas, 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.

[Signature]
Notary Public

My commission expires: 1/6/2013



STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 4 day of January 20 11, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came David L. Corliss of the City of Lawrence, Kansas, known to me to be the same person who executed the foregoing instrument on behalf of the City of Lawrence, Kansas, 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:

3/21/12



SCHEDULE OF EXHIBITS

- A. Legal Description of Property
- B. Map of Protected Property
- C. Conservation Values of Protected Property
- D. Location of Wooded Area

EXHIBIT A

Legal Description of Property

A TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 13 SOUTH, RANGE 20 EAST OF THE SIXTH PRINCIPAL MERIDIAN NOW DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF SAID QUARTER SECTION; THENCE NORTH 90°00'00" EAST ALONG THE NORTH LINE OF SAID QUARTER SECTION 627.51 FEET; THENCE SOUTH 00°00'00" WEST, 65.54 FEET; THENCE SOUTH 20°15'06" EAST, 162.39 FEET; THENCE SOUTH 34°11'29" EAST, 317.35 FEET; THENCE SOUTH 10°51'03" EAST, 299.30 FEET; THENCE SOUTH 33°55'06" EAST, 250.09 FEET; THENCE SOUTH 30°23'02" EAST, 62.50 FEET; THENCE NORTH 90°00'00" WEST, 1094.76 FEET TO A POINT ON THE WEST LINE OF SAID QUARTER SECTION; THENCE NORTH 00°17'16" EAST ALONG SAID WEST LINE, 1035.81 FEET TO THE POINT OF BEGINNING.

THE ABOVE CONTAINS 20.00 ACRES, MORE OR LESS, ALL IN DOUGLAS COUNTY, KANSAS, SUBJECT TO PUBLIC ROAD RIGHT-OF-WAY AND EASEMENTS OF RECORD.

EXHIBIT B

Map of Protected Property (Certificate of Survey with Sensitive Areas delineated)

EXHIBIT C

Conservation Values of Protected Property

Conservation Values on the Protected Property are described as follows:

1. Stands of Mature Trees
2. Floodplain
3. Stream Corridor

EXHIBIT D

Map Showing Location of Wooded Area

