

**CONSERVATION EASEMENT AGREEMENT
(Preservation of Floodplain/Floodprone Area)**

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the 10th day of May, 2010, by and between **State of Nebraska, Department of Roads** ("Owner"), and the **City of Lincoln, Nebraska, a municipal corporation**, ("City") and the **Lower Platte South Natural Resources District, a political subdivision of the State of Nebraska**, ("NRD").

RECITALS

I.

Owner is the owner in fee simple of certain land ("Real Property") legally described as:
All of Lot 48, Irregular Tract located in the Southwest Quarter of Section 14, Township 9 North, Range 6 East, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the northeast corner of said Southwest Quarter Section; thence South 89° 38' 05" West, a distance of 250.98 feet along the north line of said Quarter Section to a point on the easterly Burlington Northern Railroad Company right of way line; thence South 03° 24' 30" East, a distance of 1,301.20 feet to a point on the northerly abandoned C.R.I. & P. Railroad right of way line; thence North 40° 02' 04" East, a distance of 286.99 feet along said abandoned railroad right of way line to a point on the east line of said Quarter Section; thence North 00° 34' 57" West, a distance of 1,080.82 feet to the Point of Beginning, containing 6.06 acres, more or less.

II.

The City and NRD desire to acquire and Owner is willing to convey a permanent Conservation Easement to preserve the flood storage capacity and other natural resources over the Easement Area (Exhibit A). The City is authorized to accept and hold this Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easements Act.

III.

This Agreement has been submitted to the Lincoln City - Lancaster County Planning Commission pursuant to the provisions of Neb. Rev. Stat. §76-2,112 for review and recommendation and said Commission has found that the Conservation Easement is in conformance with the Lincoln City Comprehensive Plan.

IV.

The City Council of the City of Lincoln, Nebraska, has approved and accepted this Conservation Easement after duly considering the recommendations of the Lincoln City -

Lancaster County Planning Commission and has authorized the Mayor to execute this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of **FOURTEEN THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS, (\$14,800.00)**, and other good and valuable consideration, receipt of which is hereby acknowledged, Owner hereby grants and conveys to City and NRD for their benefit and the benefit of the public a conservation easement over the Easement Area to restrict the use of the Easement Area to open space to protect and preserve the floodplain/floodprone area, drainageway, wetlands, and tree masses that occur on the land, to protect other water resources and biologic resources of the floodplain/floodprone area as identified on Exhibit B, and to restrict development and future use of the Easement Area that will significantly impair or interfere with the open space values and natural resources of the Easement Area.

The terms, conditions, and covenants of the conservation easement hereby created are as follows:

1. Use of Easement Area.

A. Compatible Uses. The Easement Area shall be used only for purposes compatible with open space, recreational, or wetlands management practices. Notwithstanding subsection B, "Non-Compatible Uses," below, the following uses are compatible with the purposes of the Easement Area:

- i. Areas already in agricultural use at the time this easement is dedicated may continue in such use.
- ii. Roadway or utility crossings necessary for the functional use of adjacent lands constructed in accordance with the flood regulations.
- iii. Public sanitary sewer lines along the stream alignment necessary for the functional use of adjacent lands, as approved in advance by the Director of Public Works & Utilities, provided the corridor is restored following disturbance to the maximum extent practicable.
- iv. Trails or other public recreational components as approved in advance by the Director of Public Works & Utilities.
- v. Stream rehabilitation, water quality projects, or protection/restoration of other natural resources listed in Exhibit B as approved in advance by the Director of Public Works & Utilities.
- vi. Storm drain and outlet improvements conforming to the City's design standards necessary for the functional drainage of adjacent lands.
- vii. Operation of an archery range including the placement and maintenance of target stands, bow racks, elevated shooting platforms, benches, range markers, trails for movement of participants, shooting lanes for targets, roads for maintenance of the range, and other non-permanent improvements necessary to the operation of an archery range constructed in accordance with the flood regulations.
- viii. Safety devices related to an archery range including but not limited to fencing where such fencing will be split, pike rail or similar type fencing, and where any such safety devices are constructed in accordance with the flood regulations.

B. Non-Compatible Uses. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area:

- i. Construction or placing of roadways, buildings, camping accommodations, or mobile homes, fences, signs, billboard or other advertising material, or any other structure;
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials;
- iii. Building of roads, or changing in the topography of the land in any manner excepting the maintenance of foot trails or any work requested by the City;
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material;

- v. Changing the topography of the land by placing of soil or other substances or materials such as landfill or dredging spoils;
- vi. Commercial or residential development of any nature;
- vii. Human introduction of non-native plant or animal species which may compete with and result in decline or elimination of native animal species;
- viii. Operation of motorized vehicles except as necessary in the use of the area as provided herein;
- ix. The broadcast application of pesticides at any time, except for that which is needed for areas already in agricultural use at the time this easement is dedicated. Spot application of pesticides for the control of noxious weeds as provided by state law will be permitted;
- x. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum within areas not already in agricultural use at the time of the dedication of this easement;
- xi. Removal of tree masses;
- xii. Changing the hydrology of the Easement Area or the land upstream in a way that negatively impacts the easement area;
- xiii. Sedimentation of the Easement Area due to grading or construction activities outside the Easement Area;
- xiv. Any other act which would be detrimental to the scenic beauty, wildlife habitat, wetlands, the natural beauty, or natural resources of the Easement Area.

2. Term. The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the City and NRD pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

3. Condition of the Easement Area at Time of Grant. The condition of the Easement Area without limiting the generality of the terms is defined to mean the open space, drainageway, wetlands, tree masses, and the functional integrity of other water resources and biologic resources of the floodplain/floodprone area identified on Exhibit B, as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department.

4. Protection and Maintenance of the Easement Area.

A. Owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area, including but not limited to any tax or assessment affecting the easement granted herein. Owner retains the right to challenge the assessed value of the property and to challenge the validity of an any such tax or assessment.

B. Owner shall cooperate with and assist the City and NRD at the City or NRD's cost in applying for, obtaining, protecting, maintaining and enhancing any and all surface water and ground water rights and privileges related to the Easement Area by signing applications which the City deems necessary or desirable for the management, maintenance or development of the Easement Area for the purposes provided for herein.

C. The Owners shall, at Owners' sole cost and expense, maintain the Easement Area. Maintenance shall consist of routine noxious weed control, routine weed and brush control, routine removal of trash and debris, and routine non-structural maintenance of stream bed and bank stability measures following installation. If Owners fail to maintain the Easement Area the City and/or NRD may carry out such maintenance and bill the cost thereof to Owners. Owners shall pay said cost within thirty days from receipt of said billing.

5. **Inspections and Access by City.** The City and NRD shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of revegetating and for inspecting, maintaining, protecting or enhancing the floodplain/floodprone area within the Easement Area, including but not limited to stream stabilization projects, as the City or NRD may deem necessary or desirable. Such right of access will be modified as reasonably necessary upon subdivision or development of said adjacent properties.

6. **Enforcement.** Owner agrees that the City and NRD may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including but not limited to, the right to require restoration of the Easement Area to the condition at the time of this grant. Owner further agrees that the City or NRD may seek an injunction restraining any person from violating the terms of this Conservation Easement and that the City or NRD may be granted such injunction without posting of any bond whatsoever. Owner further agrees that the City and NRD do not waive or forfeit the right to take any action as they deem necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Owner further agrees that should owner undertake any activity requiring the approval of the City and NRD without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City and NRD shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and the City's and/or NRD's cost of suit, including reasonable attorney fees, shall be paid by Owner.

7. **Title to Easement Area.** Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

8. **Transfer of Interest.**

A. **Owner's Title to Easement Area.** If the land subject to this Conservation Easement Agreement or any interest therein is subsequently transferred by Owner to a third party, Owner shall notify the City and NRD in writing prior to the transfer of the land and the document transferring the interest shall be made subject to this Conservation Easement Agreement.

B. **City and NRD's Conservation Easement.** The City and NRD shall have the right to transfer this Conservation Easement to any public agency, charitable organization or trust that, at the time of transfer, is an organization qualified to assume the responsibility imposed on the City and NRD by this Conservation Easement Agreement.

9. **Binding Affect.** The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owner, City and NRD.

10. **Approvals.** Any approval required under this Agreement shall not be unreasonably withheld.

11. **Recordation.** The parties agree that this Agreement shall be duly filed by the City and NRD with the Lancaster County Register of Deeds upon execution and acceptance by the City and NRD.

12. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

Dave Heineman
Governor of the State of Nebraska

Monty W. Fredrickson
Director - State Engineer
State of Nebraska, Department of Roads

CITY OF LINCOLN, NEBRASKA

By: _____
Chris Beutler, Mayor of Lincoln

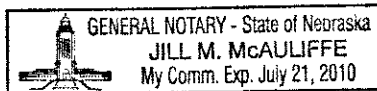
LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT

By: [Signature]
Glenn D. Johnson, General Manager

STATE OF NEBRASKA)
) ss
Lancaster County)

On this 10th day of May, A.D., 2010, before me, a General Notary Public, duly commissioned and qualified personally came Monty W. Fredrickson, P.E., Director - State Engineer of the State of Nebraska, Department of Roads, to me known to be the identical person whose name is affixed to the foregoing instrument as grantor and acknowledged the same to be a voluntary act and deed.

WITNESS my hand and Notary Seal the day and year last above written.



Jill M. McAuliffe
Notary Public

My commission expires the 21st day of July, A.D. 2010

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by **Chris Beutler, Mayor** of the City of Lincoln, Nebraska on behalf of the **City of Lincoln, Nebraska**.

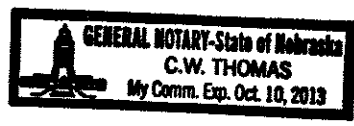
(SEAL)

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 17th day of May, 2008, by **Glenn D. Johnson, General Manager**, on behalf of the **Lower Platte South Natural Resources District**.

(SEAL)



C.W. Thomas

Notary Public

NATURAL RESOURCES OF FLOODPLAINS

Floodplains that are relatively undisturbed (or have been restored to a nearly natural state) provide a wide range of benefits to both human and natural systems. These benefits take many forms; some are static conditions (like providing aesthetic pleasure) and some are active processes (like filtering nutrients). There is some ambiguity over which of these benefits are properly termed “functions”, which are “resources”, and where the terms overlap. A fairly well accepted (but not necessarily comprehensive) list follows. The resources and functions have been loosely grouped into three categories, and the categories have been labeled according to the primary recipient of the benefit or its relationship to a larger system. That is, “water resources” include those resources and functions of floodplains that are part of or provide a benefit to the hydrologic cycles on the earth’s surface and below ground; “biologic resources” are floodplain resources and functions that benefit plants and animals; and “societal resources” are floodplain resources and functions that directly benefit human society. Throughout this document, the term “natural resources” is used to refer to any or all of the resources and functions listed here.

Water Resources

Natural Flood & Erosion Control

- Provide flood storage and conveyance
- Reduce flood velocities
- Reduce flood peaks
- Reduce sedimentation

Water Quality Maintenance

- Filter nutrients and impurities from runoff
- Process organic wastes
- Moderate temperature fluctuations

Groundwater Recharge

- Promote infiltration and aquifer recharge
- Reduce frequency and duration of low surface flows

Biological Resources

Biological Productivity

- Support high rate of plant growth
- Maintain biodiversity
- Maintain integrity of ecosystem

Fish & Wildlife Habitats

- Provide breeding and feeding grounds
- Create and enhance waterfowl habitat
- Protect habitats for rare and endangered species

Societal Resources

Harvest of Wild & Cultivated Products

- Enhance agricultural lands
- Provide sites for aquaculture
- restore and enhance forest lands

Recreational Opportunities

- Provide areas for active and passive uses
- Provide open space
- Provide aesthetic pleasure

Areas for Scientific Study & Outdoor Education

- Contain culture resources (historic and archaeological sites)
- Provide opportunities for environmental and other studies

Public Works & Utilities

Exhibit B

WARLICK BLVD

OAKLEY ST

WINDHAVEN DR

CARLTON CIR

Parcel Area
6.02 (acres)

Floodprone Area
3.03 (acres)
50% of the parcel

Printing Date: April 1, 2010
File: D:\Requested Maps\Ben Request\NDOR-0914300012000.mxd

NDOR Property Next to Prairie - Bowman

