

RESOLUTION 2009- 17

WHEREAS; The Gothenburg Improvement Company has entered into an agreement to provide a DEED OF CONSERVATION EASEMENT to Central Platte Natural Resources District; and

WHEREAS; the real property affected by the DEED OF CONSERVATION EASEMENT lies within the zoning jurisdiction of the city of Gothenburg; and.

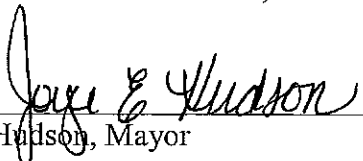
WHEREAS; the proposed DEED OF CONSERVATION EASEMENT attached as Exhibit "A" was filed with the city, and pursuant to § 76- 2,112, R.R.S such deed must be referred by action of the City Council to the Planning and Zoning Commission of the city of Gothenburg;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GOTHENBURG, DAWSON COUNTY, NEBRASKA AS FOLLOWS:

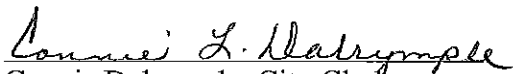
The proposed acquisition set forth in the DEED OF CONSERVATION EASEMENT by the Gothenburg Improvement Company is hereby referred to the Planning and Zoning Commission of the city of Gothenburg for comments regarding the conformity of the proposed acquisition to comprehensive planning for the area pursuant to section 76-2,112, R.R.S 1996.

Passed and approved this 1st day of September, 2009.

CITY OF GOTHENBURG, NEBRASKA

  
\_\_\_\_\_  
Joyce Hudson, Mayor

Attest:

  
\_\_\_\_\_  
Connie Dalrymple, City Clerk

Approved as to form:

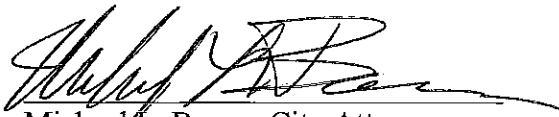
  
\_\_\_\_\_  
Michael L. Bacon, City Attorney

EXHIBIT A

### DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement ("Conservation Easement") made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between GOTHENBURG IMPROVEMENT COMPANY, a Nebraska Non-Profit Corporation ("Grantor") and the Central Platte Natural Resources District, a political subdivision of the State of Nebraska, ("Grantee" or "District").

WHEREAS, the Central Platte Natural Resources District is a political subdivision of the State of Nebraska and is authorized by the State of Nebraska to acquire and dispose of water and water rights and regulate ground water within management areas; and

WHEREAS, the District has established a management area pursuant to the Nebraska Ground Water Management and Protection Act; and

WHEREAS, the Grantor is the owner of real estate located within the geographic area included within the management area; and

WHEREAS, the Grantor and Grantee jointly recognize the necessity of conserving and managing the ground water within the geographic area covered by the management plan; and

WHEREAS, all requirements imposed pursuant to the Nebraska Conservation and Preservation Easements Act, NEB. REV. STAT. §§76-2,111 through 76-2,118 (Reissue 2003) have been complied with in that the local planning commission, if applicable, and the appropriate governing body have approved of this Deed of Conservation Easement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in receipt of the payment of valuable consideration to the Grantor by the Grantee, the receipt of which is hereby acknowledged, the Grantor and Grantee agree as follows:

1. The Grantor hereby assigns, transfers and grants to the Grantee a Conservation Easement enforceable with respect to the property (the Property) of the Grantor described as follows, to-wit:

All that part of the West Half (W½) of Section Twenty-Four (24), Township Eleven (11) North, Range Twenty-Five (25), West of the 6<sup>th</sup> P.M., in Dawson County, Nebraska, situated and lying South of the Union Pacific Railroad Company right-of-way, and

lying North of the North channel of the North Platte River, subject to all easements of record and public highways.

2. The terms, conditions and restrictions of the Conservation Easement are as follows:
  - a. As used in this Conservation Easement, the term "water well" shall mean any water well as that term is defined in Nebraska statutes.
  - b. No water well capable of pumping more than 50 gallons per minute may exist or be constructed on the Property. Any water well that exists on the Property on the date of this Conservation Easement and that is capable of pumping more than 50 gallons per minute shall be decommissioned in accordance with all applicable statutes, rules and regulations or permanently reduced in capacity so that it is incapable of pumping more than 50 gallons per minute. Except that any irrigation well existing on the Property on the date of this Conservation Easement that was previously used to irrigate other land in addition to the Property may continue to be used to irrigate the other land. Only land previously certified by the District for irrigation by that well may be irrigated. No additional land may ever be irrigated with the well. The pipes, pivot, and any and all other equipment formerly used to irrigate the Property must be permanently removed, detached, or otherwise disabled to the satisfaction of the District.
  - c. Water wells capable of pumping 50 gallons per minute or less individually but in excess of 50 gallons per minute collectively may not be clustered or joined nor may the water from such wells be commingled or in any other way combined unless the wells are used as described in Paragraph 2.b. above.
  - d. Water wells capable of pumping 50 gallons per minute or less may be used to provide water on the Property for (1) household and other domestic uses, or (2) watering range livestock.
  - e. No use of the water from a natural stream, regardless of whether or not a permit for such use is required from the Nebraska Department of Natural Resources or any successor agency, shall be made on the Property except for providing water for range livestock on the Property.
  - f. No water from any water well not located on the Property shall be used on the Property except for (1) household and other domestic uses, or (2) watering range livestock.
  - g. The Property must remain in dryland agricultural production unless prior written approval is granted by the District to alter this prohibition. No crops, hay, grass or other plants that could be subirrigated shall be grown on Property. Only those items listed on Exhibit "1" may be grown on the property unless prior written approval is granted by the District.

h. No use shall be made of the Property which will consume groundwater, including, but not limited to, the following:

- (1) No pits or other excavated areas that would expose or consume ground water shall be allowed;
- (2) No mining, sand or gravel operations shall be allowed;
- (3) No industrial, commercial, agricultural or residential development shall occur on the Property unless prior written approval is granted by the District.

3. This Conservation Easement shall be perpetual. It is appurtenant and runs with the land as an incorporeal interest in the Property and shall be enforceable against any owner or other person having any interest in the above described property including the Grantor, all persons or entities holding any interest acquired through the Grantor and all Grantor's heirs, successors, assigns and personal representatives.

4. It is the Grantor's intent, through this Deed of Conservation Easement, to permanently transfer and surrender any rights that they or their successors, heirs, assigns or personal representatives may have to irrigate or subirrigate the above-described property and to permanently prevent the development and use of any ground water for any uses on the Property or off except those specifically permitted by Paragraph 2 above. The fact that the well or wells on the Property have been decommissioned, reduced in pumping capacity to 50 gallons per minute or less, or are no longer used to irrigate the Property cannot be used to supply an offset to allow irrigation of any other land or any other water use or to justify construction of a new water well as a replacement.

5. Upon any breach of the terms of this Conservation Easement by the Grantor, the Grantee may, after reasonable notice to the Grantor, institute suits to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction either prohibitive or mandatory. The Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to the Grantee at law or equity. If the Grantor is found to have breached any of the terms of this Conservation Easement, the Grantor shall reimburse the Grantee for any costs or expenses incurred by the Grantee, including court costs and reasonable attorney's fees to the extent permitted by applicable law. No failure on the part of the Grantee to enforce any term of this Conservation Easement shall discharge or invalidate such term or any other term hereof or affect the right of the Grantee to enforce the same in the event of a subsequent breach or default.

6. The Grantee, acting by and through their respective employees and agents, have the right to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Grantor is complying with the terms of this Conservation Easement.

GOTHENBURG IMPROVEMENT COMPANY, a  
Nebraska Non-Profit Corporation

By \_\_\_\_\_  
Michael Bacon, President

STATE OF NEBRASKA    )  
                                  ) ss:  
COUNTY OF HALL        )

The foregoing Deed of Conservation Easement was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2009 by Michael Bacon, President of Gothenburg Improvement  
Company, a Nebraska Non-Profit Corporation, on behalf of said corporation, and known to me  
personally or produced satisfactory evidence of identification to me.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Accepted for the  
Central Platte Natural Resources District

By \_\_\_\_\_  
Ronald G. Bishop, General Manager

STATE OF NEBRASKA    )  
                                  ) ss:  
COUNTY OF HALL        )

The foregoing Deed of Conservation Easement was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2009 by Ronald G. Bishop, General Manager of Central Platte Natural  
Resources District, a political subdivision of the State of Nebraska, on behalf of said Natural  
Resources District and known to me personally or produced satisfactory evidence of  
identification to me.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

EXHIBIT "1"

Crops that may be grown on the Property as indicated by Paragraph 2.g.

Dryland corn  
Dryland soybeans  
Dryland milo  
Dryland wheat  
Dryland oats  
Dryland barley  
Dryland brome grass  
Forage sorghum  
Little bluestem  
Sidecoats grama  
Canada wildrye  
Needle-and-thread  
Blue grama  
Hairy grama  
Buffalograss  
Sand dropseed  
Indiangrass  
Prairie junegrass  
Porcupine grass  
Sand lovegrass  
Inland saltgrass  
Thickspike wheatgrass  
Prairie dropseed  
Tall dropseed  
Scribners panicum  
Prairie sandreed

**SUBORDINATION AGREEMENT**

For valuable consideration, including the execution of a Deed of Conservation Easement, by and between \_\_\_\_\_, as Grantor and the CENRAL PLATTE NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska, as Grantee, the undersigned, being the owner and holder of an indebtedness secured by a lien upon the real estate described hereinbelow, which Deed of Trust is dated \_\_\_\_\_, and recorded in the office of the Register of Deeds of \_\_\_\_\_ County, Nebraska on \_\_\_\_\_ at Instrument No. \_\_\_\_\_, to-wit:

INSERT LEGAL DESCRIPTION

The undersigned hereby joins in the conveyance of the Conservation Easement to the Central Platte Natural Resources District, a political subdivision of the State of Nebraska, and its successors and assigns, and conveys to the Central Platte Natural Resources District the same rights as contained in the Deed of Conservation Easement. Such conveyance is made for the sole purpose that the rights of the Conservation Easement shall be prior to and paramount to all rights held by the assigned under such Deed of Trust and that any sale or foreclosure of the Deed of Trust shall be subject to such Conservation Easement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_, Beneficiary

)

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Print Name)  
(Title)



STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Subordination Agreement was acknowledged before me on this \_\_\_\_ day  
of \_\_\_\_\_, 2009, by \_\_\_\_\_, (name), \_\_\_\_\_  
(title) of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

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