

RESOLUTION 2010-12

A RESOLUTION APPROVING CONSERVATION EASEMENT FOR THE CENTRAL
PLATTE NATURAL RESOURCES DISTRICT

WHEREAS, GIFFORD E. MASSIE, JR., a single person, is the owner of the following described real estate, to-wit:

A tract of land in the North Half (N $\frac{1}{2}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Fourteen (14), Township Eleven (11) North, Range Twenty-five (25) West of the 6th P.M., Dawson County, Nebraska, and more particularly described as follows: Beginning at a point on the North Section Line, 17,848 chains East of the Northwest Corner of Section Fourteen (14), Township Eleven (11) North, Range Twenty-five (25) West of the 6th P.M., Dawson County, Nebraska; thence East, and along the North Section Line of said Section Fourteen (14), a distance of 8.539 chains; thence South 2°26' West, a distance of 18.985 chains; thence West, a distance of 8.539 chains; thence North 2°26' East, a distance of 18.985 chains to the place of beginning and containing 16.19 acres more or less, which includes 0.43 acres more or less of County Road right-of-way; and

All that part of the West $\frac{1}{2}$ of Section 14 which lies North of the right-of-way of the Cozad Irrigation Canal, less and except the West 1,178' thereof and less and except property conveyed to the City of Gothenburg, Nebraska by deed recorded in Book 103, Page 163 in the office of the Register of Deeds and except a tract of land in the North $\frac{1}{2}$ of the NW $\frac{1}{4}$ of said Section 14, conveyed to Gifford E. Massie, Jr. and Darlene R. Massie by deed recorded in Book 141, Page 384 in the office of the Register of Deeds, all in Township 11 North, Range 25, West of the 6th P.M., Dawson County, Nebraska,

and

WHEREAS, the Central Platte Natural Resources District is desirous of obtaining a conservation easement from GIFFORD E. MASSIE, JR., on real estate legally described hereinabove and GIFFORD E. MASSIE, JR. is desirous of selling a conservation easement to the Central Platte Natural Resources District on the real estate legally described hereinabove; and

WHEREAS, Central Platte Natural Resources District and GIFFORD E. MASSIE, JR. have submitted a request to the City of Gothenburg, Nebraska, for the approval of a conservation easement on the real estate legally described hereinabove; and

WHEREAS, pursuant to NEB. REV. STAT. §76-2,112 (2009) on October 5, 2010, the City of Gothenburg forwarded the easement request to the Gothenburg Planning and Zoning Commission for their review and recommendations regarding the conformity of the proposed acquisition to comprehensive planning for the area; and

WHEREAS, also pursuant to NEB. REV. STAT. §76-2,112 (2009) on October 12, 2010, the Gothenburg Planning and Zoning Commission recommended approval of the easement at their regularly scheduled meeting; and

NOW, BE IT RESOLVED by the City of Gothenburg that the designated conservation easement on the real estate legally described hereinabove and more specifically set forth in the Deed of Conservation Easement attached hereto as Exhibit "A" and incorporated herein by this reference, should be, and hereby is, approved.

Resolution moved by Council Member Aden

Seconded by Council Member Kennedy

Vote:

Mayor Hudson:	For	___	; Against	___	; Abstained	___	; Not Present	___
Council President Kennedy:	For	<u>x</u>	; Against	___	; Abstained	___	; Not Present	___
Council Member Aden:	For	<u>x</u>	; Against	___	; Abstained	___	; Not Present	___
Council Member Strauser:	For	<u>x</u>	; Against	___	; Abstained	___	; Not Present	___
Council Member Whiting:	For	<u>x</u>	; Against	___	; Abstained	___	; Not Present	___

PASSED AND ADOPTED this 19th day of October, 2010.

CITY OF GOTHENBURG

Joyce E. Hudson
Joyce Hudson, Mayor

Connie L. Dalrymple
Connie Dalrymple, City Clerk

DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement ("Conservation Easement") made this ____ day of _____, 2010, by and between GIFFORD E. MASSIE, JR., a single person ("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 2009) 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:

A tract of land in the North Half (N½) of the Northwest Quarter (NW¼) of Section Fourteen (14), Township Eleven (11) North, Range Twenty-five (25) West of the 6th P.M., Dawson County, Nebraska, and more particularly described as follows: Beginning at a point on the North Section Line, 17,848 chains East of

the Northwest Corner of Section Fourteen (14), Township Eleven (11) North, Range Twenty-five (25) West of the 6th P.M., Dawson County, Nebraska; thence East, and along the North Section Line of said Section Fourteen (14), a distance of 8.539 chains; thence South 2°26' West, a distance of 18.985 chains; thence West, a distance of 8.539 chains; thence North 2°26' East, a distance of 18.985 chains to the place of beginning and containing 16.19 acres more or less, which includes 0.43 acres more or less of County Road right-of-way; and

All that part of the West ½ of Section 14 which lies North of the right-of-way of the Cozad Irrigation Canal, less and except the West 1,178' thereof and less and except property conveyed to the City of Gothenburg, Nebraska by deed recorded in Book 103, Page 163 in the office of the Register of Deeds and except a tract of land in the North ½ of the NW¼ of said Section 14, conveyed to Gifford E. Massie, Jr. and Darlene R. Massie by deed recorded in Book 141, Page 384 in the office of the Register of Deeds, all in Township 11 North, Range 25, West of the 6th P.M., Dawson County, Nebraska.

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 requirement. Approval considerations will be based upon the consumptive use of the new land use. An exception is that a single residential unit development is allowed without further approval. 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) Pits or other excavated areas that would expose, drain, tile or consume ground water;
 - (2) Mining, sand or gravel operations;
 - (3) Industrial, commercial, agricultural or multi-unit 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.

7. The Grantor and the Grantee agree that the State of Nebraska, which may provide necessary funding for acquisition of this Conservation Easement, shall, if such funding is provided, be deemed and recognized as a third party beneficiary under this Conservation Easement. As such, the State of Nebraska, acting by and through the Department of Natural Resources and the Office of the Attorney General, shall have the right to enforce all of the terms of this Conservation Easement, against both the Grantee and the Grantor. In addition, this Conservation Easement may only be amended by a written document that is executed by the Grantor and the Grantee, approved by the Department of Natural Resources and recorded among the land records of the appropriate jurisdiction for the Property. Proof of the Department of Natural Resources' approval shall accompany or be attached to said document.

8. If at any time the Grantee intends to acquire the fee simple interest of the Property encumbered by this Conservation Easement, prior to any such conveyance of the fee simple interest, the Grantee shall assign its interest in this Conservation Easement to the Nebraska Game and Parks Commission or its successor state agency.

9. No transfers by sale, gift, exchange, or distributions as a result of death or otherwise, of the real estate described hereinabove may be made without prior notification to the Grantee, which notification shall include the name, address and telephone number of the person, persons, entity or entities, to whom said real estate is to be transferred

Gifford E. Massie, Jr.

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
Sideoats 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

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