

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING THE CONSERVATION AND PRESERVATION
EASEMENT TO THE NEBRASKA LAND TRUST
Grantors: Margaret R. Kennedy and Francis T. Kennedy

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2012), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2012), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the Conservation and Preservation Easements Act, Neb. Rev. Stat. §§76-2,111 to 76-2,118 (Reissue 2009) provides that the creation of conservation and preservation easements shall be approved by the appropriate governing body; and

WHEREAS, Margaret R. Kennedy and Francis T. Kennedy, Co-Trustees of the Margaret R. Kennedy Revocable Trust dated November 11, 2009 and Co-Trustees of the Francis T. Kennedy Revocable Trust dated November 11, 2009 (hereinafter "Grantors") own approximately 262 acres of real property in Sarpy County, Nebraska; and,

WHEREAS, Grantors have proposed granting a conservation and preservation easement to the Nebraska Land Trust, Inc. on the property further described in the Conservation and Preservation Easement, a copy of said Conservation and Preservation Easement is attached hereto and incorporated by reference; and,

WHEREAS, the Nebraska Land Trust is a charitable, non-profit organization and meets the requirements of Neb. Rev. Stat. §76-2,111(3)(b) (Reissue 2009) to be a holder of said easement; and

WHEREAS, pursuant to Neb. Rev. Stat. §76-2,112 (Reissue 2009), the proposed Conservation and Preservation Easement was submitted to the Sarpy County Planning Commission regarding the conformity of the proposed easement with the Sarpy County Comprehensive Development Plan. The Sarpy County Planning Commission recommended approval of the proposed easement on June 19, 2013; and

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT said Conservation and Preservation Easement is in conformity with the Sarpy County Comprehensive Development Plan and the purposes of the Conservation and Preservation Easement are consistent with the Conservation and Preservation Easement Act and said easement is hereby approved.

BE IT FURTHER RESOLEVED THAT the County Board authorizes the Chairman of the Sarpy County Board to sign the Conservation and Preservation Easement document showing approval of the easement.

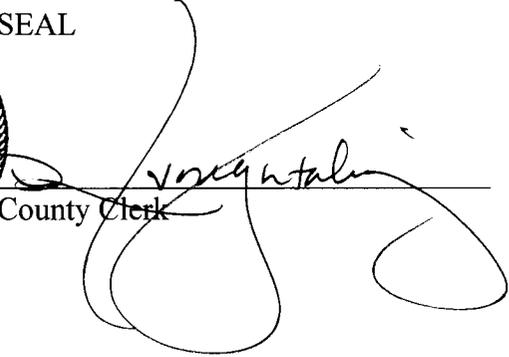
The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 2nd day of July 2013.

Attest

SEAL


Sarpy County Board Chairman




County Clerk

COUNTER LM CF P
 VERIFY LM CF P
 PROOF D P
 FEES \$ 220.00
 CHECK # 2900295
 CHG _____
 REFUND _____
 SHORT _____

FILED SARPY COUNTY NEBRASKA
 INSTRUMENT NUMBER NEBRASKA DOCUMENTARY
 STAMP TAX

2013-21795

\$ Ex 23

07/08/2013 3:06:36 PM

Wayne J. Dowling

By: lam

REGISTER OF DEEDS



EASE

After recording return to: The Nebraska Land Trust
 9200 Andermatt Drive, Suite 7
 Lincoln, NE 68526

RJK
 (E)

6068200 NT-com

CONSERVATION AND PRESERVATION EASEMENT

THIS CONSERVATION AND PRESERVATION EASEMENT (hereinafter "Easement") executed this 3rd day of July, 2013 by and between Margaret R. Kennedy and Francis T. Kennedy, Co-Trustees of the Margaret R. Kennedy Revocable Trust Agreement dated November 11, 2009 and Francis T. Kennedy and Margaret R. Kennedy, Co-Trustees of the Francis T. Kennedy Revocable Trust Agreement dated November 11, 2009 (hereinafter "Grantors") whose address is 18206 West Highway 31, Springfield, Nebraska, 68059, The Nebraska Land Trust Incorporated (hereinafter "Grantee"), a Nebraska nonprofit association, with its principal office located at 9200 Andermatt Drive, Suite 7, Lincoln, Nebraska, 68526, and the UNITED STATES OF AMERICA ("United States") acting by and through the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS"), acting on behalf of the Commodity Credit Corporation, as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space. The Grantors and Grantees are referred to collectively as the Parties.

The Grantee shall have the primary responsibility for management and enforcement of the terms of this Conservation Easement Deed, subject to the rights of the United States.

RECITALS:

WHEREAS, the Grantors own in fee simple approximately 262 acres of real property in Sarpy County, Nebraska as described in the attached Exhibit "A" (herein referred to as the "Protected Property"), which possesses agricultural, aesthetic, historical, and ecological value in its present condition; and

WHEREAS, the Protected Property is primarily open farmland that is agriculturally productive, and is an important part of the agricultural landscape in Sarpy County, providing

RJK
 (E) Nebraska Title Company
 PO Box 61169
 Lincoln NE 68506

03-16-13 10:02 RCVD

A

productive soils for crop production and grasslands for haying and grazing in a largely urban county; and

WHEREAS, the Protected Property includes natural habitat within the Lower Platte River Biologically Unique Landscape designated through the Nebraska Natural Legacy Project, Nebraska's State Wildlife Action Plan, which identifies landscapes with native flora and fauna where conservation should focus, and

WHEREAS, the Protected Property includes oak/hickory woodlands near Schramm State Park, which has been designated an Important Bird Area by the National Audubon Society, due to these woodlands being important habitat for migratory and nesting songbirds; and

WHEREAS, the Protected Property includes natural Platte River frontage and sandbars that provide habitat for the endangered pallid sturgeon, endangered least tern, and threatened piping plover; and

WHEREAS, the Protected Property contains archeological sites documented by the Nebraska State Historical Society; and

WHEREAS, the Protected Property is upriver from a Metropolitan Utilities District well field that provides drinking water to the Omaha area; and

WHEREAS, the Protected Property provides scenic views from public places, including frontage along Nebraska Highway 31, the MOPAC hike/bike trail, and Platte River State Park; and

WHEREAS, All of the above constitute the Conservation Values of the Protected Property; and

WHEREAS, the Grantors desire to conserve the Conservation Values and present status of the Protected Property by conveyance to Grantee of this Conservation and Preservation Easement (hereinafter "Easement") for the purpose of conserving the present status and Conservation Values of the Protected Property and to prevent the use or development of the Protected Property for any purpose or in any manner which would conflict with the maintenance of the Protected Property in the present condition for both this and all future generations except as explicitly provided for herein; and

WHEREAS, the Parties hereto recognize the agricultural, natural, historic, and scenic character of the Protected Property and the Parties hereto have the common purpose of conserving the aforesaid Conservation Values of the Protected Property (hereinafter "Conservation Purposes"); and

WHEREAS, the Grantee wishes to accept the Easement as provided in Sec. 76-2,112, R.R.S. Neb., 1943 (as amended); and

WHEREAS, the present status of the aesthetic, agricultural, historical, ecological and natural condition of the Protected Property at the date this Easement becomes effective, is evidenced by reports, photographs, maps and scientific documentation possessed at the present time. Said evidences of the condition of the Protected Property are referred to collectively as the

Baseline Documentation Report dated June 12, 2013, which is incorporated herein by reference; and

WHEREAS, the Conservation Purposes of this Easement are recognized by, and this Easement will serve, at least and without limitation, the following clearly delineated governmental conservation statutes, policies, and programs:

- The Farmland Protection Policy Act, (16 U.S.C. Sections 3838h and 3838i), whose purpose is "the protection of agricultural use and related conservation values of eligible land by limiting nonagricultural uses of that land;"
- The Nebraska Natural Legacy Project developed by the Nebraska Game and Parks Commission and others, to identify Biologically Unique Landscapes where conservation should focus;
- The policy of the State of Nebraska to conserve fish and wildlife resources for future generations, which the Nebraska Legislature has memorialized through various conservation-related statutes;
- The Sarpy County Comprehensive Plan which recognizes the "Schramm District" as an area with sensitive environmental resources that should be conserved;
- The Farm and Ranch Lands Protection Program (FRPP), which is a voluntary program to help farmers and ranchers keep land in agricultural production and prevent conversion to non-agricultural uses, administered by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), on behalf of the Commodity Credit Corporation; and
- The Western Governors' Association Policy Resolution 05-19 supporting "voluntary incentive-based methods for preserving open space, maintaining land and water for agricultural and timber production, wildlife, and other values."

WHEREAS, the Grantee has, among its purposes, the preservation of land providing open space, agricultural productivity, wildlife habitat, historical sites, and scenic qualities to ensure its continuing availability for these uses; and

WHEREAS, the Grantee is a publicly supported tax exempt not-for-profit organization qualified under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Grantee is therefore qualified under Section 170(h) of the Code and possesses the authority to acquire a Conservation and Preservation Easement under the provisions of Sec. 76-2,111 to Sec. 76-2,118, R.R.S. Neb., 1943 (as amended) called the "Conservation and Preservation Easement Act" (the "Act"); and

WHEREAS, the Grantors are the sole owner of the fee simple interest in the Protected Property; and

2

NOW, THEREFORE, for and in consideration of One Dollar (\$ 1.00), the mutual intentions expressed in the foregoing recitals, the mutual covenants, terms, conditions and restrictions herein contained and other good and valuable consideration, Grantors voluntarily grant and convey to the Grantee, and Grantee voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by the Act and of the nature and character described in this Easement, exclusively for the purpose of conserving and forever maintaining the Conservation Purposes of the Protected Property. Furthermore, Grantors and Grantee hereto agree as follows:

ARTICLE I Grant of Easement

Grantors, for themselves and their beneficiaries, successors and assigns (collectively, "Grantors"), hereby irrevocably grant, transfer and convey to Grantee, its successors and assigns, this Easement encumbering the Protected Property in perpetuity as authorized by and subject to all pertinent provisions of the Code and the Act. This Easement conveyance is a bargain-sale from Grantors to the Grantee.

ARTICLE II Covenants relating to the Protected Property

All activities that are inconsistent with the Conservation Purposes of this Easement are prohibited. Additionally, Grantors covenant and bind the Protected Property in perpetuity, such covenants to run with the Protected Property, as follows:

- A. Agricultural Use:** Grantors shall not convert any portion of the Protected Property being used for agriculture to nonagricultural uses.
- B. Conservation Plan:** As required by section 1238I of the Food Security Act of 1985, as amended, the Grantors, their heirs, successors, or assigns, shall conduct agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date of this Easement. However, the Grantors may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Protected Property, with advance notice to the Grantors, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, NRCS shall work with the Grantors to explore methods of compliance and give the Grantors a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantors do not comply with the conservation plan, NRCS will inform Grantee of

the Grantors noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantors to correct such noncompliance, and (c) Grantors have exhausted their appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Easement based on an Act of Congress, NRCS will work cooperatively with the Grantors to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantors may be or become subject.

- C. Historic Sites:** The Parties acknowledge that the Protected Property is also enrolled in the Farm and Ranch Lands Protection Program based on historical or archaeological resources found thereon. Therefore, Grantors shall comply with the Secretary of Interior's Standards and Guidelines for Historic Preservation in managing the Protected Property.
- D. New Structures:** Grantors shall not build any new structure on the Protected Property, other than the construction or renovation of ponds to protect and improve these areas for agriculture, waterfowl and other wildlife and to maintain or replace existing structures and roadways, except as specified in Article IV, below.
- E. Surface Disturbance:** No removal, filling, or changes in topography, surface or subsurface water systems, wetlands, or natural habitat will be allowed unless such activities:
- Are commonly necessary in the accomplishment of agricultural practices, conservation, habitat management, and/or forest management uses of the Protected Property.
 - Do not harm State or federally recognized rare, threatened, or endangered species, such determination of harm to be based on information from the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission.
 - Are not detrimental to the protected soils or scenic and wildlife habitat protection purposes of this Conservation Easement, and prior to commencement of any such act, all necessary Federal, State, and local permits and approvals must be secured.
 - Are specifically provided for in Article IV, below.
- F. Existing Condition:** Grantors shall take only such action upon the Protected Property as may be necessary to maintain its existing condition or as is otherwise

specifically permitted herein. Grantors shall not remove or destroy any native or reestablished grasses, plants, trees or vegetation except as determined desirable by Grantors to maintain the Protected Property in the condition existing at the date hereof and in order to establish, maintain or promote native wildlife and plant life within the Protected Property or for permitted uses. Notwithstanding the forgoing, Grantors may maintain and improve the Protected Property for the purpose of enhancing native wildlife, native vegetation, and historical values, subject to obtaining Grantee's prior approval.

G. Other Conditions and Restrictions: The following added conditions and restrictions apply to the use and enjoyment of the Protected Property:

1. **Access:** There shall be no public access to the Protected Property without the prior consent of Grantors. "Public" shall not include Grantee or guests and invitees of Grantee. Grantors hereby give consent to Grantee and its designated agents (a) to make an annual inspection of the Protected Property and (b) such other inspections as may be reasonably necessary to confirm the status of the Protected Property in the event Grantee has cause to believe there has been a violation of this Easement. In no event shall Grantee or its agents access the Protected Property without prior reasonable notice to Grantors. Grantee shall have no right to limit the access of Grantors or any guest, invitee, licensee or tenant of Grantors or any parties who shall farm the Protected Property as tenants pursuant to the terms of Article IV, Sections T., U., and W. below.
2. **Industrial and Commercial Uses:** There shall be no development of the Protected Property for industrial, commercial or residential purposes, including but not limited to: buildings, billboards, telecommunications towers, motocross tracks, golf courses, commercial wind turbines, power lines, mobile homes, mining, and/or water development for sale or transport off-site, and oil or gas development, except as provided for in Article IV.
3. **Game Farming or Game Farm Animals:** The Grantors shall not construct, conduct, or operate a game farm, or raise or hold game farm animals on the Protected Property. Game farm animals include penned, enclosed or privately-owned caribou, black bear, grizzly bear, mountain lion, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, mountain goat, red deer, and any other cloven-hoofed ungulate which is indigenous to Nebraska and any non-indigenous or exotic cloven-hoofed ungulate which could interbreed with or spread disease to any cloven-hoofed ungulate indigenous to Nebraska. Provided however, "traditional" domestic livestock, including but not limited to domestic cattle, American Bison (*Bison bison*), and ostrich, are not included in the definition of game farm animals.

4. **Wind and Solar Power Generation:** The construction of commercial wind and solar energy generation facilities that are not for use in conjunction with those activities permitted by this Easement are prohibited anywhere on the Protected Property, provided however that such energy generation facilities may be installed within and used solely to provide power to the Building Envelope so long as such facilities do not impact the Conservation Purposes and with prior approval of the Grantee.
5. **Noxious and Detrimental Species.** The Grantors shall not introduce into the Protected Property any plant species designated as noxious or detrimental to wildlife by local, state, or federal land or wildlife agencies.
6. **Division or Subdivision of the Property:** Notwithstanding that the Protected Property may have been divided or subdivided prior to this Easement, the Protected Property subject to this Easement may only be conveyed as a single tract. The Grantors do not have the right to divide, subdivide, or take any action that creates an actual or de facto division or subdivision of the Protected Property.
7. **Construction:** The Grantors shall not construct any structures or facilities except as specifically provided for in Article IV, below.
8. **Roads:** The Grantors shall not construct any new roads except as specifically provided for in Article IV.
9. **Off-Road Vehicles:** The Grantors shall not use vehicles off of existing roads and travel-ways in a manner that may result in apparent erosion or compaction of the soil, impact on the natural appearance of the Protected Property, damage or destruction to vegetation, or interference with use of the natural habitats by the wildlife species occurring on the Protected Property. The Parties recognize, however, that the use of off-road vehicles may be necessary in property management and retrieval of harvested big game animals, and such limited use is therefore expressly permitted, provided that all reasonable efforts are made to minimize any adverse impact of the use, consistent with the terms and intent of this Easement. Any off-road vehicle use must be consistent with the first sentence of this Paragraph.
10. **Commercial Feed Lot:** The Grantors shall not establish or maintain any commercial feedlot. For the purposes of this Easement, a commercial feed lot shall be defined as a permanently constructed, confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock. Nothing in this Paragraph shall prevent Grantors from seasonally confining their livestock into an area for feeding consistent with historical practices.

11. **Dumping and Deposit of Hazardous Waste:** No trash, debris, ashes, sawdust, and other non-compostable refuse may be dumped or otherwise disposed of on the Protected Property, except livestock manure associated with normal agricultural activities, and permitted by applicable state and federal laws. If the Grantors become aware of any accidental, illegal, or other placement or spilling of hazardous substances or waste or toxic materials, including oil and petroleum products, on the Protected Property, the Grantors shall notify the Grantee on a timely basis.
12. **Utilities:** Other than those permitted in Article IV, additional utility structures and systems are prohibited.
13. **Mining:** All surface or open pit exploration for extraction or removal of oil, gas, and other minerals, rock, gravel, or sand found in, on, or under the Protected Property is prohibited. No sub-surface or other exploration or extraction of oil, gas, rock, gravel, sand, or other minerals, including the lease, sale, or other disposition of the rights to such materials is allowed. However, soil, sand, gravel or rock may be extracted without further permission from Grantee so long as such extraction is solely for use on the Protected Property for non-commercial purposes and/or for sand and gravel mining reclamation activities in accordance with "Exhibit B", in conjunction with activities permitted herein, is accomplished in a manner which is consistent with the purpose of this Easement, does not substantially diminish or impair the Conservation Values, and has a limited and localized impact on the Protected Property. Any change in the reclamation required in Exhibit B, either by amendment to same, or separately, shall require prior approval by the Grantee.
14. **Timber Harvesting:** The Grantors shall not harvest timber on the Protected Property except as specifically allowed in Article IV.
15. **Billboards:** The Grantors shall not construct, maintain, or erect any commercial signs or billboards on the Protected Property. Small signage not to exceed 4 feet by 4 feet may, however, be displayed to state the name of the owner and the Protected Property and that the property is protected by this Easement, to prohibit any unauthorized entry or use, or to advertise for the sale of the Protected Property or goods produced on the Protected Property.
16. **Aircraft Facilities:** The Grantors shall not construct or erect any aircraft facilities or aircraft landing facilities on the Protected Property.
17. **Game Proof Fences:** Grantors shall not construct any big game proof fences, which are defined as any fence that cannot be crossed by elk, deer or other big game wildlife, except in the Building Envelopes and around the Community Garden.

18. **Native Flora and Fauna:** Grantors shall not remove or destroy any native plants, trees, vegetation, or wildlife, except as permitted in Article IV or for the control of weeds and pests consistent with generally accepted agricultural practices in Sarpy County, Nebraska. Notwithstanding the forgoing, Grantors may maintain and improve the Protected Property for the purpose of enhancing native wildlife, native vegetation, and historical values, subject to obtaining Grantee's prior approval.
19. **Impervious Surfaces:** Impervious surfaces are defined to include permitted residential buildings, agricultural buildings (with or without flooring), and paved areas on the Protected Property (not including public or county roads or other roads paved by easement holders who have rights that may be superior to the rights conveyed to Grantees by this Conservation Easement Deed) may not exceed 2% of the total land surface of the Conservation Easement Acreage.
20. **Recreation and Educational Activity:** Recreational and Educational Activities that require infrastructure (impervious surfaces) are prohibited. Under no circumstances will athletic fields, golf courses or driving ranges, commercial airstrips or helicopter pads, motocross biking, or any other improvement or activity inconsistent with current or future agricultural production be permitted on the Protected Property. Recreational and Educational Activities that do not require infrastructure (impervious surfaces) are permitted so long as such activities are consistent with the purposes of this Conservation Easement and do not adversely impact the soils and/or agricultural operations on the Protected Property.
21. **Federal Criminal Statutes:** No activities shall knowingly be permitted on the Protected Property in violation of Federal criminal statutes, even if these activities do not violate state criminal statutes or are specifically authorized by the State.

ARTICLE III

United States Right of Enforcement

Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will exercise these rights under the following circumstances: in the event the Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' right to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State law.

ARTICLE IV Grantors Reserved Rights

Except as expressly limited by this Easement, Grantors reserve for themselves, their invitees, licensees, tenants and guests all rights of an owner of the Protected Property, including the right to use it for all purposes consistent with this Easement.

- A. **Agriculture:** Consistent with NRCS FRPP, State of Nebraska and Papio-Missouri River Natural Resources District regulations, standards and requirements, and the terms of this Easement, Grantors shall have the right to use the Protected Property for the production, processing, and marketing of agriculture crops, including but not limited to “traditional” domestic livestock, “traditional” row crops, organic agriculture, and aquaculture so long as the species being raised are native to the Platte River and noninvasive.

- B. **Building Envelope:** The Grantors have the right to maintain, repair or replace the existing single-family residence, associated outbuildings, and structures necessary for agricultural production in the Building Envelope described on the attached "Exhibit A", consisting of approximately 10 acres. Subject to Sarpy County zoning rules and regulations, Grantors shall also have the right to build one new single family residence including septic system and utilities in the Building Envelope, and Grantors may construct up to four small rental cabins and a Native American earth lodge for education and agri-tourism in the Building Envelope, not to exceed 800 square feet each.

Grantors shall notify Grantee in writing prior to the commencement of any new construction within the Building Envelope and Grantee, at its discretion, may require a survey of Building Envelope boundaries prior to the commencement of new construction. The Grantors also have the right to construct, reconstruct, maintain and repair, if necessary, utilities and an access road to the residences, associated outbuildings, and cabins. Any utility corridor and/or roadway must follow the least damaging feasible route with regard to or within the Protected Property.

- C. **River Cabin Building Envelope:** The Grantors have the right to maintain, rebuild, repair, restore, or replace the existing river cabin and associated outbuildings within a 1-acre Building Envelope shown on the attached "Exhibit A". Grantor shall notify Grantee in writing prior to the commencement of any restoration or construction within this Building Envelope and Grantee, at its discretion, may require a survey of Building Envelope boundaries prior to the commencement of any new construction. Subject to local rules and regulations, the Grantors shall also have the right to reconstruct, maintain and repair, if necessary, utilities and an access road to the cabin and associated outbuildings. Any utility corridor and/or roadway must follow the least damaging feasible route with regard to or within the Protected Property. Any outdoor artificial lighting installed within the Building Envelope shall be directional in design, so

that light is cast downward and not upward or outward, with an intent to minimize light pollution.

- D. Agricultural Structures and Improvements:** All major existing agricultural buildings and agricultural structures located within the Protected Property may be used for agricultural purposes and be repaired, reasonably enlarged and replaced without further permission of the Grantee. New major buildings and improvements such as barns, sheds, and garages which are to be used solely for agricultural purposes related to the protected property, including the processing or sale of agricultural products predominantly grown or raised on the Protected Property, shall be built within the Building Envelope of 10 acres described in Exhibit A. Loafing sheds, corrals, water lines, water tanks and other minor agricultural structures and improvements without concrete floors or foundations may be constructed anywhere on the Protected Property provided however, that any such structures shall be located where they would cause the least possible disturbance.
- E. Fencing:** The Grantors may construct, maintain, replace and repair fences on the Protected Property without prior approval of the Grantee, including localized fences as needed to control drifting snow. Big game proof fences are permitted within the Building Envelopes and around the Community Garden without prior approval of the Grantee. No other big game proof fences can be constructed on the Protected Property.
- F. Recreational Uses:** Unless otherwise restricted herein, any passive recreational and educational activities that do not impact the Conservation Purposes, agricultural operation, and soils are permitted. The following recreational uses are expressly permitted on the Protected Property:
1. **Hunting:** Hunting, trapping, and fishing, in a manner consistent with state and federal laws and regulations;
 2. **Horseback Riding:** Commercial horseback rides on designated trails in a manner consistent with local, state, and federal laws;
 3. **Hiking:** Hiking on designated trails with the Grantors' permission and in a manner consistent with local, state, and federal laws; and
 4. **Tent Camping:** Dispersed, temporary tent camping, including "pop-up" trailers and "cab-over campers," with Grantors' permission, except that camping shall not be allowed within 50 feet of a waterway.
- G. River Access Site:** Grantors may operate or lease up to five acres to a local, state, or federal governmental agency, or to a non-governmental non-profit organization, for the sole purpose of a primitive River Access Site that would be available to the public and outfitters for the putting in and taking out of canoes, kayaks, tubes, and other river vessels, subject to posted rules and regulations. Such River Access Site shall be located with the intent of causing the least

possible disturbance to the Protected Property and the location of the River Access Site shall be subject to approval by the Grantee, upon the submission of a specific plan and location by the Grantors. Grantors shall notify Grantee in writing prior to the commencement of any lease and/or operation and construction of a River Access Site and facilities. The Grantors shall also have the right to construct, maintain and repair, if necessary, utilities and an access road to the river access site. Any utility corridor and/or roadway must follow the least damaging feasible route with regard to or within the Protected Property.

- H. Hunting Blinds:** Temporary hunting blinds may be constructed anywhere on the Protected Property.
- I. Customary Rural Enterprises:** Customary rural enterprises are permitted on the Protected Property in buildings constructed and maintained for agricultural use. Customary rural enterprises that require their own buildings are prohibited.
- J. Agri-tourism:** Low impact Agri-tourism activities are permitted, including but not limited to farm tours, work experiences, field trips, petting zoos, corn mazes, and hay rides.
- K. Construction of Roads:** Maintenance of existing farm roads and trails is permitted, but no portion of the Protected Property outside of the Building Envelope shall be paved or otherwise covered with concrete, asphalt, or any other impervious material. Nor shall any new unpaved road be constructed within the Protected Property except as needed for agricultural activities.
- L. Installation of Utilities:** Grantors may install utilities for serving those uses permitted on the Protected Property by the terms of this Easement. To the extent practicable, such utilities shall follow the least damaging feasible route with regard to or within the Protected Property.
- M. Range Management and Livestock Production:** The Grantors may use the Protected Property for common or typical livestock production, including hay production, grazing, feeding, breeding, raising, and managing livestock, provided these activities do not materially jeopardize the Conservation Purposes. The term "livestock" includes American Bison (*Bison bison*) and other livestock that are considered "traditional" at the time of the execution of this Easement and within the local area surrounding the Protected Property. Traditional livestock shall not include any of the game farm animals described in Article II, G.3. of this Easement.

Sound range stewardship and livestock management are integral to the protection of the wildlife habitat and other Conservation Values protected by this Easement. As such, all activities affecting range health will be conducted in a manner that fosters and/or maintains the ecological function of the land, water processes, wildlife, and plant community succession. Livestock grazing shall not exceed generally accepted standards for Sarpy County.

- N. **Water Resources:** In accordance with applicable laws and regulations, the Grantors may maintain, enhance and develop any new or existing water resources which may include but are not limited to wells, windmills, buried water pipelines, irrigation, stock tanks and stock ponds on the Protected Property for permitted agricultural activities, domestic needs, fish and wildlife uses, and private recreation.
- O. **Agrichemicals and Biological Controls:** The Grantors may use agrichemicals and biological controls, but only in accordance with all applicable laws and in those amounts and with that frequency of application necessary to accomplish reasonable farming objectives and/or to improve wildlife habitat. The use of such agents shall be conducted in such a manner as to minimize any adverse effect upon the Conservation Values of the Protected Property and to avoid any impairment of the natural ecosystems and their processes.
- P. **Forest Management and Timber Harvest:** Maintenance of wooded areas and tree cover is integral to and part of the Conservation Purposes, including wildlife habitat and scenic views. As such, all activities affecting wooded areas and tree cover shall be conducted in a manner that maintains healthy woodland conditions over time and sustains and perpetuates the mix of native, naturally occurring species in representative ages and group sizes. Before any trees (except those described in the paragraph below) may be harvested from the Protected Property, the Grantors shall prepare and provide to Grantee a Forest Management Plan for its prior review and approval. The Grantee reserves the right to provide such Plan to the NRCS, Nebraska Forest Service, and/or the Nebraska Game and Parks Commission for review.

The Grantors may: (i) cut trees for posts and poles; (ii) cut and gather dead, dying and down trees for firewood and to abate disease and infestation; (iii) cut or prune trees and brush, which constitute a hazard to persons, property, or road; (iv) cut trees within the Building Envelope; (v) control invasive woody species such as eastern red cedar, honey locust, and Siberian elm by all means necessary, to preserve and restore native hardwood forest habitat; and (vi) remove trees encroaching into cropland, fence lines, and/or grasslands.

- Q. **Habitat Improvement:** Subject to other provisions of this Easement, the Grantors reserve the right to undertake habitat improvement projects subject to a plan approved by the Grantee, which will enhance terrestrial and/or aquatic wildlife habitat. All such activities shall be undertaken in order to protect the Conservation Purposes of the Protected Property. The Grantors will not introduce into the Property any plant species defined or listed as noxious or detrimental to wildlife by local, state, or federal land or wildlife agencies. The Grantors may restore cropland to grassland for livestock grazing and hay production, so long as high quality certified weed-free seed is used that consists of native grass and forb species found in the area.

- R. **Brush Piles:** Grantors may place tree stumps, logs, and brush originating from the Protected Property in piles for burning, decay, or disposal.
- S. **Terraces and Dams:** The Grantors may construct, maintain, replace and repair terraces, tile lines, risers, and dams on the Protected Property according to NRCS standards, to retain moisture and reduce erosion in cropland, provided however, that any such terraces and/or dams shall be located with the intent of causing the least possible disturbance to natural, archeological and historical resources.
- T. **Sand and Gravel Mining Reclamation:** Grantors may allow reclamation activities associated with the former Western Sand and Gravel mining operation, including some alteration of existing topography to restore proper drainage to cropland, in accordance with "Exhibit B".
- U. **Community Gardens:** Small plots of land may be leased to individuals for the raising of produce, flowers, or other crops, and wildlife proof fencing may be constructed around these plots.
- V. **Bank Stabilization:** Subject to local, state, and federal rules, regulations, and permits, Grantors may take measures to protect the Platte River bank from further erosion in the immediate vicinity of the river cabin. A written plan to implement bank stabilization measures must be submitted to and approved by the Grantee prior to any action being taken, and the measures shall be the minimum necessary to protect ground in the immediate vicinity of the cabin from eroding into the Platte River.
- W. **Residual Rights:** Except as limited by this Easement, the Grantors may exercise and enjoy all rights as owners of the Protected Property, including the right to use the Protected Property for any purpose consistent with this Easement.

ARTICLE V General Provisions

- A. **Enforcement:** The Grantee may enforce this Conservation Easement in law or in equity against Grantors, their successors, assigns, licensees, tenants and permittees. If there is a violation of any of the provisions of this Conservation Easement, the Grantee shall have the right to notify the party in violation, who shall promptly cure the violation by:
- (1) Ceasing the violation; or
 - (2) Restoring the Protected Property to its condition before the violation; or
 - (3) Both, as the case may be.

If the violation continues, the Grantee shall have the right, but not the obligation [except to the extent that Article II, B. is applicable], to pursue legal actions or

proceedings at law or in equity to cause such violation to be cured. Grantors shall reimburse the Grantee for all expenses incurred, including legal fees whether in or out of court and all other related or incidental costs of proceedings, legal or otherwise, brought to cure an alleged violation of this Conservation Easement or to collect such reimbursement. Failure to enforce any restriction or covenant herein contained shall in no way be deemed a waiver of a right to do so thereafter as to the same violation or breach or as one occurring prior or subsequent thereto. The Grantee shall resolve violations within 60 days of their discovery in accordance with 7 CFR 1491.30. Failure to cure the violation may result in enforcement of the terms of the Conservation Easement Deed by the United States.

Notwithstanding anything herein to the contrary, Grantors agree and acknowledge that they have no legal right or claim whatsoever arising against Grantee in the event that Grantee in the future does not enforce any restriction in the Easement or elects to become released from the Easement.

- B. Amendments/Assignment:** If the circumstances arise under which an amendment to or modification of this Easement would be appropriate, this Easement may be amended only with the written consent of Grantors, Grantee, local government as required by Neb. Rev. Stat. § 76-2112, and the United States. Any such amendment shall be consistent with the Conservation Purposes of the Conservation Easement, shall comply with Nebraska law and applicable federal law, including the Farm and Ranch Lands Protection Program, and may not affect its perpetual duration. Any amendment must be in writing, signed by both Parties, and recorded in the official records of Sarpy County, Nebraska.

This Conservation Easement may be assigned by the Grantee at its election and with the prior approval of the United States, to a qualified organization as defined in Section 170(h) of the Code with the prior written consent of Grantors, such consent not to be unreasonably withheld.

- C. Baseline Documentation Report:** The Grantors and Grantee agree that the present status of the agricultural, historic, scientific, ecological and natural condition of the Protected Property at the date this Easement becomes effective, shall be evidenced by reports, photographs, maps and scientific documentation possessed at the present time. Said evidences of the condition of the Protected Property are referred to collectively as the Baseline Documentation Report, which has been signed and acknowledged by the Grantors and representatives of Grantee and is incorporated herein by reference.
- D. Title Warranty:** Grantors warrant that they have good title to the Protected Property; that the Grantors have the right to convey this Easement, and that the Protected Property is free and clear of any encumbrances.
- E. Environmental Warranty:** Grantors warrant that they are in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantors warrant that there are no notices by any governmental authority of any

violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Protected Property. Grantors further warrant that they have no actual knowledge of a release or threatened release of Hazardous Materials as defined herein and by applicable federal and state law.

Moreover, Grantors hereby promise to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantors or any other prior owner of the Protected Property. Grantors' indemnification obligation shall not be affected by any authorizations provided by Grantee or the United States to Grantors with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment."

- F. **Release:** Grantee may release this Conservation Easement through appropriate legal process upon determining the Conservation Easement does not at any time in the future substantially achieve the conservation and preservation purpose, in accordance with Sec. 76-2,113, R.R.S. Neb., 1979, or as authorized by any other provision of law in effect at the time such release is requested.

If circumstances arise in the future such as render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement may only be terminated or extinguished, whether in whole or in part, upon request of the Grantors, Grantee, and the United States, by judicial proceedings in a court

of competent jurisdiction, and the amount of the proceeds to which the Grantee shall be entitled, after the satisfaction of costs from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined pursuant to Paragraph M. below.

G. Responsibilities of Grantors and Grantee Not Affected: Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of Grantors as owners of the Protected Property. Among other things, this shall apply to:

1. Taxes: Grantors shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property, Grantors will reimburse Grantee for the same.

2. Upkeep and Maintenance: Grantors shall continue to be solely responsible for the upkeep and maintenance of the Protected Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Protected Property.

3. Liability and Indemnification: Grantors shall indemnify and hold harmless Grantee, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Protected Property, which may arise from, but is not limited to, Grantors' negligent acts or omissions or Grantors' breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

In addition, Grantors shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantors' negligent acts or omissions or Grantors' breach of any representation, warranty, covenant, agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws."

4. Recording/Fees: Promptly following its execution by the Parties, Grantors shall record the Easement with the Sarpy County Registrar of Deeds and pay any fees associated with such recording. Notwithstanding the foregoing, the Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, the Grantors appoint the Grantee as Grantors' attorney-in-fact to execute, acknowledge and deliver any necessary instrument on Grantors' behalf. Without limiting the foregoing, the Grantors agree to execute any such instruments upon request.

- I. Monitoring:** It is the obligation of both Grantors and Grantee, to monitor the Protected Property so as to keep all agricultural lands, grasslands, springs, creeks, ponds, wooded areas and other natural conditions in the state and condition as they exist at the date hereof, and in accordance with the Baseline Documentation Report, subject to the terms and conditions specifically permitted herein. The NRCS shall monitor the conservation plan adopted and implemented in accordance with Article II, B. above.
- J. Perpetuity of Easement:** The covenants, terms, conditions, restrictions, and purposes imposed with this grant shall bind the Parties, their agents, personal representatives, heirs, assigns, and all other successors to them in interest and shall run with the land and continue in perpetuity as servitude upon the Protected Property.
- K. Partial Invalidity:** Invalidation of any provision of this Easement, by court judgment, order, statute or otherwise, shall not affect any other provision which shall remain in force and effect.
- L. Notice of Condemnation:** In the event all or any part of the Protected Property is ever proposed for condemnation by the State or local government, the NRCS must be notified immediately, and the consent of the United States obtained, before the action may proceed.
- M. Extinguishment and Condemnation:** This Conservation Easement constitutes a real property interest immediately vested in the Grantee and the United States, and may be extinguished only with the approval of the Grantee and the United States. The Grantee and the United States stipulate to have a fair market value of forty-four percent (44%), the "Proportionate Share" of the fair market value of the Protected Property unencumbered by this Conservation Easement. The Proportionate Share has been determined at the time of conveyance of this Conservation Easement by dividing the fair market value of this Conservation Easement by the fair market value of the Protected Property without this Conservation Easement. The Proportionate Share will remain constant over time.

Extinguishment: Due to the Federal Interest in this Conservation Easement, the United States must be a party to any such proceedings.

Condemnation: Due to the Federal interest in this Conservation Easement, the United States must consent to any condemnation.

If the Easement is terminated, extinguished or condemned, in whole or in part, or part of the Protected Property is sold for road right-of-way, including along Highway 31, pursuant to a threat of condemnation by a government agency, then the Grantor must reimburse the Grantee and the United States an amount equal to the Proportionate Share of the fair market value of the Protected Property unencumbered by this Conservation Easement. The fair market value of the Protected Property will be determined at the time this Conservation Easement is terminated, extinguished, or condemned by a complete summary appraisal that meets the Uniform Acquisition Standards for Federal Land Acquisition (UASFLA), is approved by the Grantee and the United States, and is completed by a Nebraska certified general appraiser. The fair market value of the Protected Property may not include any increase in value after the date of this Conservation Easement Deed attributable to improvements.

The Proportionate Share paid to the Grantee and the United States of America must be allocated as follows: (a) to the Grantee or its designee, fifty percent (50%) of the Proportionate Share; and (b) to the United States fifty percent (50%) of the Proportionate Share, representing the proportion each party contributed to the purchase price of this Conservation Easement. The Proportionate Share of the Grantee also includes twenty-one percent (21 %) of the appraised value of this Conservation Easement, donated by the Grantor to the Grantee.

Until such time as the Grantee and the United States receive the Proportionate Share from Grantor or the Grantor's successor or assign, the Grantee and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. The Grantee or its designee must use its allocation of the Proportionate Share in a manner consistent with the conservation purposes of the Conservation Easement. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

- N. **Property Transfer:** Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to the Grantee of the transfer of any interest at least twenty (30) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
- O. **Subordination:** Any mortgage, easement, lien or other cloud on the Protected Property's title shall be subordinated to the terms of this Easement.

- P. Governing Law:** This Easement shall be construed to promote the purposes of the enabling statute set forth in Sec. 76-2,111 to Sec. 76-2,118, R.R.S. Neb., 1943 (as amended) called the "Conservation and Preservation Easement Act", which authorizes the creation of Conservation and Preservation Easements for purposes including those set forth in the Recitals herein, and the Conservation Purposes of this Easement, including such purposes as are defined in Sections 170 (h)(4)(A) of the Internal Revenue Code.
- Q. Acts of Nature:** Unless otherwise specified, nothing in this Easement shall require Grantors to take any action to restore the condition of the Protected Property after any fire or other Act of Nature. Grantors understand and agree that nothing in this Easement relieves them of any obligation or restriction on the use of the Protected Property imposed by law.
- R. Entire Agreement:** This document sets forth the entire agreement of the Grantors and the Grantee with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement. If any provision is found to be invalid, the remainder of the provisions of this Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- S. "Grantors" and "Grantee":** The term "Grantors," as used in this Easement, and any pronouns used in place thereof shall mean and include the above-named Grantors, and their heirs, personal representatives, executors, successors and assigns. The term "Grantee," as used in this Easement, and any pronouns used in place thereof shall mean The Nebraska Land Trust, Incorporated, and its successors and assigns.
- T. Titles:** Section and Paragraph titles and subtitles are for convenience only and shall not be deemed to have legal effect.
- U. Costs, Liabilities, and Insurance:** Grantors assume all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, and shall maintain adequate comprehensive general liability insurance coverage that includes any and all commercial hunting operations, and/or other recreational activities, and/or lodging facilities. Grantee's name shall be listed among the insured parties on the policy. Grantors shall keep the Grantee's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantors.

V. Correspondence: All correspondence related to this Conservation Easement Deed must be sent to the parties at the addresses listed below:

Grantor: Margaret R. Kennedy and Francis T. Kennedy
18206 West Highway 31
Springfield, Nebraska, 68059

ACCEPTANCE

This Conservation and Preservation Easement is hereby accepted by THE NEBRASKA LAND TRUST INCORPORATED, Grantee herein.

By David S. Sands
David S. Sands, Executive Director

Date: July 3, 2013

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me on this 3rd day of July, 2013, by David S. Sands, Executive Director of The Nebraska Land Trust Incorporated.



Sarah A. Watts
Notary Public

ACCEPTANCE

This Conservation and Preservation Easement is hereby accepted by the Natural Resources Conservation Service, United States Department of Agriculture, for the United States of America.

By Kasey Taylor, Nebraska Conservation

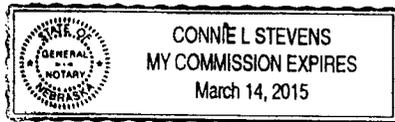
Its Authorized Officer

Date: 6-21-13

STATE OF NEBRASKA)
) ss.
COUNTY OF Lancaster

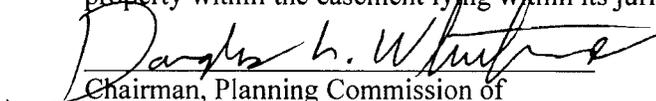
The foregoing instrument was acknowledged before me on this 21 day of June, 2013, by Kasey Taylor, Acting State Conservationist of the Natural Resources Conservation Service, United States Department of Agriculture.

Connie L. Stevens
Notary Public



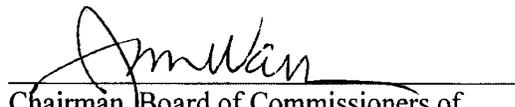
PLANNING COMMISSION ACTION

On the 19th day of June, 2013, this Conservation and Preservation Easement was considered by the Planning Commissioners of Sarpy County, Nebraska as to that portion of the property within the easement lying within its jurisdiction. The Planning Commissioners of Sarpy County, Nebraska recommended that the Commissioners of Sarpy County, Nebraska approve the Conservation and Preservation Easement as to that portion of the property within the easement lying within its jurisdiction.


Chairman, Planning Commission of
Sarpy County, Nebraska

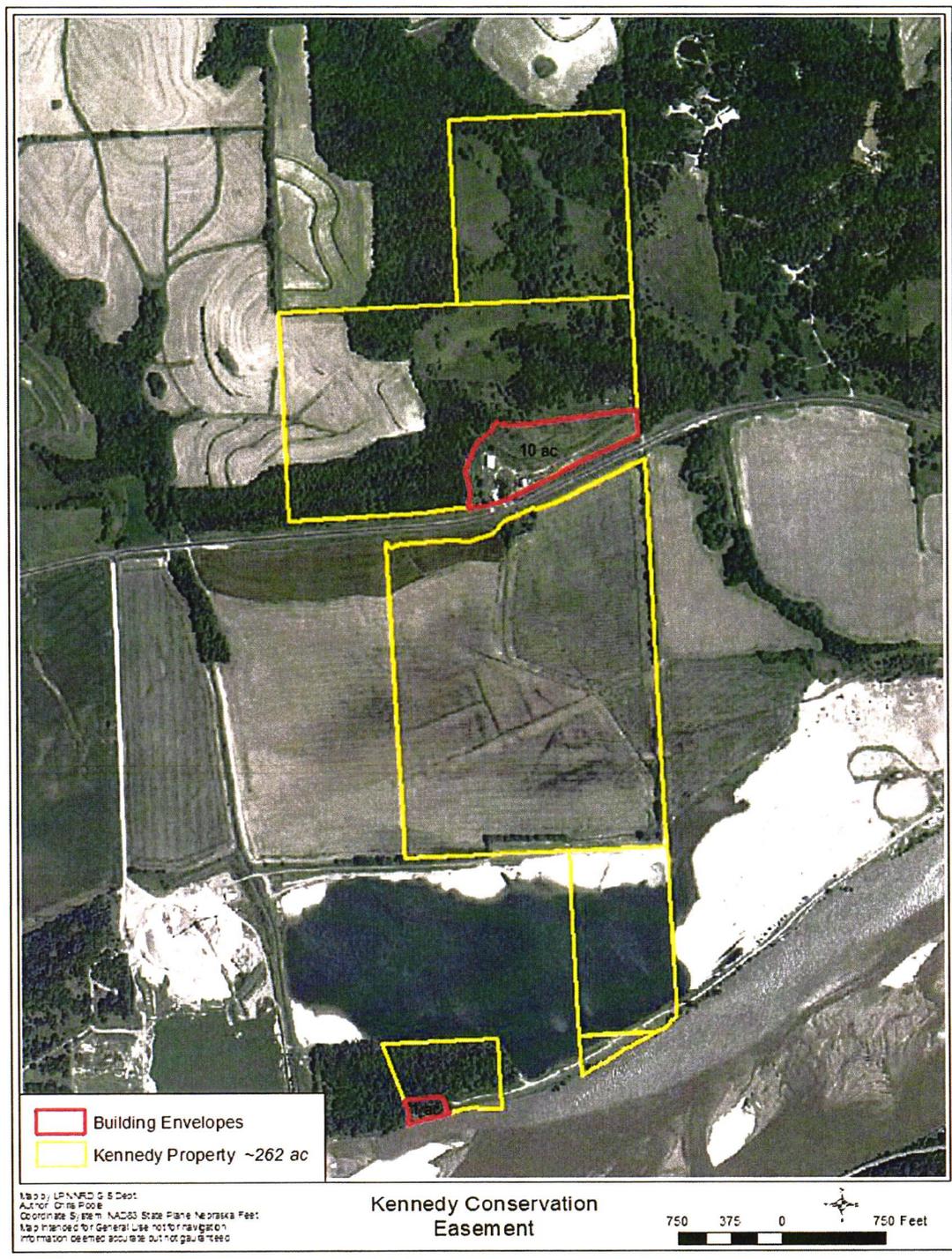
**APPROVAL OF BOARD OF COMMISSIONERS OF
SARPY COUNTY, NEBRASKA**

By Resolution duly adopted on the 2nd day of July, 2013, the Board of Commissioners of Sarpy County, Nebraska, approved this Conservation and Preservation Easement as required by Neb. Rev. Stat. § 76-2112 as to that portion of the property within the easement lying within its jurisdiction.


Chairman, Board of Commissioners of
Sarpy County, Nebraska

2013-2017 FRPP
F11

EXHIBIT A (page 1 of 3)
Legal Description of the Property



X

EXHIBIT A (page 2 of 3)
Legal Description of Property

Parcel A:

The Southeast Quarter of the Southeast Quarter (SE1/4 SE1/4) of Section 8, Township 12 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska.

Parcel B:

Part of the Northeast Quarter (NE1/4) of Section 17, Township 12 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, lying South of State Highway 31, together with part of the North Half of the Southeast Quarter of said Section 17, together with part of Tax Lot B lying within said North Half, all more particularly described as follows: Commencing at the Southwest corner of said North Half; thence South 89 degrees 57 minutes 42 seconds East (assumed bearing) 709.06 feet on the South line of said North Half to the point of beginning; thence North 00 degrees 37 minutes 59 seconds West 2,311.94 feet on a line 1,917.46 feet West of and parallel with the East line of said North Half and its Northerly extension to the Southerly line of State Highway 31; thence Northeasterly on the Southerly line of State Highway 31 on the following described 5 courses: thence North 88 degrees 11 minutes 45 seconds East 290.07 feet; thence North 87 degrees 11 minutes 13 seconds East 203.64 feet; thence Northeasterly on a non-tangent 1,979.86 foot radius curve to the left, chord bearing North 77 degrees 50 minutes 10 seconds East, chord distance of 507.23 feet, an arc distance of 508.63 feet; thence North 68 degrees 29 minutes 07 seconds East 203.64 feet on a non-tangent line; thence North 66 degrees 53 minutes 56 seconds East 804.27 feet to the East line of said Northeast Quarter; thence South 00 degrees 22 minutes 50 seconds East 1,482.86 feet on the East line of said Northeast Quarter to the Southeast corner thereof; thence South 00 degrees 37 minutes 59 seconds East 1,346.82 feet on the East line of said North Half to the Southeast corner thereof; thence North 89 degrees 57 minutes 04 seconds West 1,313.26 feet on the South line of said North Half; thence North 89 degrees 57 minutes 42 seconds West 604.33 feet on the South line of said North Half to the point of beginning; EXCEPT that part taken by The State of Nebraska, Department of Roads by Return of Appraisers, recorded April 3, 1995 as Inst. No. 95-4161 in the records of Sarpy County, Nebraska.

Parcel C:

Part of the Southeast Quarter of the Southeast Quarter (SE1/4 SE1/4) of Section 17, Township 12 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, together with part of Government Lot One (1) in the Northeast Quarter (NE1/4) of Section 20, Township 12 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, all more particularly described as follows: Commencing at the Northwest corner of said Southeast Quarter of the Southeast Quarter; thence South 89 degrees 57 minutes 04 seconds East (assumed bearing) 597.39 feet on the North line of said Southeast Quarter of the Southeast Quarter to the point of beginning; thence South 00 degrees 32 minutes 08 seconds East 1,632.32 feet on a line 597.36 feet East of and parallel with the West line of said Southeast Quarter of the Southeast Quarter and its Southerly extension to the Platte River; thence Northeasterly along the Platte River on the following described 4 courses; thence North 66 degrees 21 minutes 20 seconds East 61.26 feet; thence North 61 degrees 27 minutes 36 seconds East 129.77 feet; thence North 62 degrees 27 minutes 20 seconds East 261.66 feet; thence North 67 degrees 35 minutes 25 seconds East

Y

338.36 feet to the East line of said Southeast Quarter of the Southeast Quarter; thence North 00 degrees 37 minutes 59 seconds West 1,295.16 feet on the East line of said Southeast Quarter of the Southeast Quarter to the Northeast corner thereof; thence North 89 degrees 57 minutes 04 seconds West 715.87 feet on the North line of said Southeast Quarter of the Southeast Quarter to the point of beginning.

Parcel D:

The North Half of the Northeast Quarter (N1/2 NE1/4) EXCEPT that part lying South of the State Highway No. 31, commonly referred to as Fishery Road, and that portion of the South Half of the Northeast Quarter (S1/2 NE1/4) lying North of State Highway No. 31, commonly referred to as the Fishery Road, all in Section 17, Township 12 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska; EXCEPT that part conveyed to The State of Nebraska, Department of Roads by Warranty Deed, recorded March 21, 1995 as Inst. No. 95-3474 in the records of Sarpy County, Nebraska.

Parcel E:

That part of Government Lot One (1) in the Northeast Quarter (NE1/4) of Section 20, Township 12 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, described as follows: Commencing at the Northwest corner of said Lot One (1); thence South 89 degrees 41 minutes 18 seconds East (assumed bearing) 470.68 feet on the North line of said Lot One (1) to the point of beginning; thence South 18 degrees 06 minutes 35 seconds East 536.66 feet; thence South 06 degrees 50 minutes 59 seconds West 77.88 feet to the Platte River; thence Northeasterly along the Platte River on the following described 6 courses: thence North 76 degrees 18 minutes 05 seconds East 98.44 feet; thence North 75 degrees 41 minutes 07 seconds East 149.65 feet; thence North 84 degrees 48 minutes 20 seconds East 77.32 feet; thence North 79 degrees 54 minutes 32 seconds East 119.85 feet; thence North 88 degrees 32 minutes 59 seconds East 79.03 feet; thence South 87 degrees 25 minutes 10 seconds East 177.63 feet to the Southerly extension of the Easterly line of the Southwest Quarter of the Southeast Quarter of Section 17, Township 12 North, Range 11 East of the 6th P.M., Sarpy County; thence North 00 degrees 32 minutes 08 seconds West 500.51 feet on the Southerly extension of the Easterly line of said Southwest Quarter of the Southeast Quarter to the Southeast corner thereof; thence North 89 degrees 41 minutes 18 seconds West 844.95 feet on the North line of said Lot One (1) to the point of beginning.

EXHIBIT B

Western Sand and Gravel Lease with pertinent reclamation provisions

SAND AND GRAVEL LEASE

THIS AGREEMENT made and entered into this 7th day of September, 1999, by and between Isabelle C. Kennedy Trust, hereinafter referred to as Trust and CONCRETE INDUSTRIES, INC., A Nebraska Corporation, presently doing business as Western Sand & Gravel Company, hereinafter referred to as Lessee, WITNESSETH:

1. The Trust, in consideration of the rents and royalties to be paid and the terms and conditions hereinafter set forth to be met and complied with by Lessee, does hereby lease and let unto Lessee, and Lessee does hereby lease from the Trust for the purpose of exploring, developing and operating for and producing sand and gravel thereon and therefrom, the following described land in Sarpy County, Nebraska:

The Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of Section 17, Township 12 North, Range 11 East, and the east eight (8) acres of Government lot #1, Section 20, Township 12 North, Range 11 East, Sarpy County, Nebraska, (48 acres more or less)

hereinafter referred to as the land, subject to all valid easements, reservations, restrictions and rights of way of record and all public roads; and upon and subject to all the terms and conditions hereinafter set forth.

2. Subject to all of the terms and conditions hereof, this Lease shall remain in force until July 1, 2002 and thereafter Lessee shall have the right to three successive three-year renewals of this Lease so long as sand and gravel is produced from the land in paying quantities and the Lessee shall be entitled to subsequent successive three-year term renewals of this Lease thereafter with the written consent of the Trust so long as sand and gravel is produced from the land in paying quantities. It is contemplated that Lessee will obtain these renewals of this Lease to facilitate the operations which Lessee desires to undertake on the land and Lessee's full performance of all terms and conditions hereof, but the failure of Lessee to obtain any such renewal shall not excuse Lessee from its obligation to fully perform all terms and conditions of this Lease. If Lessee fails to obtain a renewal of this Lease at any time then, and in such event, any performance by Lessee which would or might have been deferred until a later date if Lessee had obtained such a renewal shall not be so deferred but shall be due and must be completed by Lessee not later than the date upon which such renewal would have been effective; and if this Lease is terminated at any time for any reason other than non-renewal by Lessee then, and in such event, any performance by Lessee which would or might have been deferred until a later date in the absence of such termination shall not be so deferred but shall be due and must be completed by Lessee not later than the date of such termination. Unless the context clearly otherwise requires, all terms and conditions of this Lease and all renewals thereof shall apply throughout the entire duration of the Lease and all renewals thereof, with like effect as if this Lease and all renewals thereof constituted one single agreement by and between the parties hereto for such entire duration, and all such terms and conditions including, but not limited to, all references to the duration and date of termination of this Lease shall be so interpreted. (Example: There can be only one date of termination which shall be either on or before July 1, 2002, if this Lease is not

Aa

renewed, or during or at the end of its last renewal if this Lease is renewed at least once.)

3. The Trust reserves and Lessee shall pay to the Trust, in addition to the annual rental, the following royalty: (a) fourteen and one-quarter cents (\$0.1425) per ton for each and every ton, of two thousand pounds, of sand and gravel produced and saved from the land and not used in connection with the development and operation of the leased premises, or (b) five percent (5%) of the market value of all sand and gravel produced and saved from the land and not used in connection with the development and operation of the leased premises, whichever is greater. Sand and gravel shall mean and include all sand, gravel and related products of every kind, nature and description whatsoever. The market value thereof shall mean its fair market value at the leased premises, which shall in no event be less than the gross sales prices obtained by Lessee for such products exclusive of hauling costs and sales taxes which are separately billed by Lessee to the purchasers thereof. Such royalty interest so reserved by the Trust shall be produced and paid free of cost by Lessee to the Trust and an accounting shall be made for the same by Lessee to the Trust on a monthly basis. Full payment of all royalty due with respect to any month shall be made by Lessee to the Trust on or before the end of the month next following and shall be accompanied by Lessee's written report and accounting for the same, made under oath, which shall show the kind and quantity of all sand and gravel products produced and sold, the sales prices thereof and all other information necessary to clearly establish the amount of royalty due. No sand and gravel products shall be removed from the land unless the same are sold by Lessee and a full report and accounting for the same is made by Lessee to the Trust along with full payment of all royalty due with respect thereto. Lessee shall maintain sales tickets or other suitable sale documentation to fully substantiate the kind and quantity of all sand and gravel products produced and sold, the sales prices thereof and the royalty due with respect thereto, copies of all of which shall be furnished free of cost by Lessee to the Trust from time to time as and when the Trust may so request, and all such copies so furnished to the Trust shall be organized by Lessee in such a manner that the Trust can readily ascertain the specific monthly report to which each such item pertains. All sand and gravel products produced and stockpiled on the land, but not sold by Lessee, as of the date of termination of this Lease, shall be weighed and removed from the land at Lessee's sole and exclusive cost and expense; the royalty due with respect thereto shall be computed and determined in accordance with the first sentence of this paragraph as if the entire remaining quantity of each kind of sand and gravel product had been sold by Lessee for the average price obtained by Lessee during the most recent month in which such kind of product was actually sold by Lessee as shown by Lessee's prior monthly reports on file with the Trust, and all of such remaining royalty shall be immediately due and payable from Lessee to the Trust.

4. The total royalty due and payable from Lessee to the Trust with respect to the entire duration of this Lease shall be the greater of (a) the total royalty computed and determined in accordance with paragraph 4 hereof due and payable from Lessee to the Trust as specified therein, or (b) One Hundred Thousand Dollars (\$100,000) due and payable from Lessee to the Trust as follows: the first Ten Thousand Dollars

Ab

(\$10,000) thereof on or before the third anniversary date of this Lease and an additional Ten Thousand Dollars (\$10,000) thereof on or before each of the next succeeding nine (9) anniversary dates of this Lease. Total royalty paid from Lessee to the Trust shall be cumulated from the inception of this Lease to determine whether Lessee has met the minimum royalty requirements of this paragraph. (Example: If Lessee pays royalty of Twenty Thousand Dollars (\$20,000) during the first year of this Lease, Lessee will have met the minimum royalty requirements through its fourth anniversary date; if Lessee then pays additional royalty of Thirty Thousand Dollars (\$30,000) during the second year of this Lease, Lessee will have met the minimum royalty requirements through its seventh anniversary date; and if Lessee then pays additional royalty of Fifty Thousand Dollars (\$50,000) during the third year of this Lease, Lessee will have met all minimum royalty requirements). ~~If any non-renewal or other termination of this Lease occurs prior to July 1, 2008, then, and in such event, the entire minimum royalty of One Hundred Thousand Dollars (\$100,000) required by this paragraph shall be due and must be paid by Lessee to the Trust not later than the date of such non-renewal or other termination of this Lease. All royalty shall be paid by Lessee to the Trust at the Trust's address, c/o Isabelle C. Kennedy, 4917 South 143rd Street, Omaha, NE 68137.~~

5. For the purpose of determining Lessee's right to any renewal of this Lease, production of sand and gravel from the land in paying quantities as referred to in the first sentence of paragraph 2 hereof shall mean that amount of production which results in royalty being due and payable from Lessee to the Trust pursuant to paragraph 4 hereof which totals not less than Ten Thousand Dollars (\$10,000) during the three (3) years immediately preceding the first renewal of this Lease and not less than Fifteen Thousand Dollars (\$15,000) during the three (3) years immediately preceding the second and every subsequent renewal of this Lease. The requirements of this paragraph are separate and distinct from the minimum royalty requirements of paragraph 5 hereof and shall apply without regard to whether or not such minimum royalty requirements have been met.
6. Lessee shall have the right to install, construct, maintain, operate and use on the land all electric power lines, communication lines, machinery, equipment, buildings, processing facilities, stockpile areas and other things necessary to produce, save, store, process, sell, weigh, load and transport the sand and gravel produced from the land. All such things so placed on the land by Lessee shall be and remain Lessee's sole and separate property and shall be removed from the land, at Lessee's sole and exclusive cost and expense, on or before the date of termination of this Lease. Lessee shall within thirty (30) days after the issuance of this Lease make a report of Lessee's progress to the Trust and shall begin construction of the necessary works and installation of the necessary machinery for the physical development of the land within ninety (90) days after the issuance of this Lease.
7. As a result of its operations on the land and as one of the end products thereof, Lessee shall construct on the land prior to the termination of this Lease, at Lessee's sole and exclusive cost and expense, one (1) single dike (hereinafter referred to as the dike) along the entire river frontage of the land and as close as practicable to the present bank ~~one~~ of the river. The dike shall be of sufficient size and quality of construction

to fully and adequately protect all the remainder of the land from the highest river crest which can be expected during a one hundred (100) year period as most recently determined by the Corps of Engineers of the United States Army prior to the inception of this Lease (hereinafter referred to as the 100 year flood level) and shall meet all of the other requirements of this paragraph. The dike shall be constructed of earth and shall be properly compacted and properly sloped; its top shall be not less than one hundred feet (100') wide measured at its narrowest point; and no part of its top shall have an elevation of less than eighteen inches (18") above the 100 year flood level. Prior to the termination of this Lease, Lessee shall also armor the entire exterior (river side) of the dike to an elevation of not less than eighteen inches (18") above the 100 year flood level with rocks, chunks of concrete or other similar suitable material sufficient in kind and quantity to fully and adequately protect the exterior of the dike from the effects of river erosion. Lessee shall make adequate provisions to receive all such material and shall either immediately use such material, or store the same for future use, in armoring the dike. Lessee shall furnish and provide any and all additional suitable material necessary to armor the dike, and shall properly place and install all armoring material furnished and provided by Lessee, all at Lessee's sole and exclusive cost and expense. Lessee shall timely apply for and make all necessary and diligent efforts to obtain any and all permits or authorizations from the Corps of Engineers of the United States Army and any other federal agencies which may be required as a condition precedent to armoring the dike and the Trust shall join in such application if and as requested by Lessee. The failure of Lessee to obtain any such required federal permit or authorization after, and in spite of, all such necessary and diligent efforts by Lessee shall excuse Lessee from fulfilling the requirement of armoring the exterior of the dike unless the Trust is thereafter able to obtain such necessary federal permit or authorization, in which event Lessee shall be required to armor the exterior of the dike in like manner as if Lessee had been able to obtain such necessary federal permit or authorization. The cost for making the application and obtaining the permits and authorizations from the Corps of Engineers as set forth above shall be paid by Lessee.

- 8. As a result of its operations on the land and as one of the end products thereof, Lessee shall also create on the land prior to the termination of this Lease, at Lessee's sole and exclusive cost and expense, one (1) single lake (hereinafter referred to as the lake), which shall be 25 acres, more or less, in size. The lake shall be in all respects suitable for recreational development and use by the Trust as of the date of termination of this Lease and shall meet all of the other requirements of this paragraph. All shoreline edges of the lake abutting each of the house sites hereinafter referred to in paragraph 11 hereof, and not less than seventy-five percent (75%) of all shoreline edges in any event, shall be sloped in a smooth, regular and even fashion and as gently as possible so as to be suitable for wading, swimming and similar recreational uses. The first ⁴ forty feet of shoreline shall have an 8 to 1 slope. The water and lake edges and bottom shall be clean and free from obstructions and foreign matter which might pose ⁹⁹ a risk or hazard to persons coming in contact therewith while wading, swimming, boating or otherwise engaging in normally anticipated recreational water activities. ⁹⁹ The quality of the water in the lake shall be such as to meet all applicable health and safety codes, standards and requirements so as not to pose a risk or hazard to persons wading or swimming therein or otherwise engaging in recreational activities

involving prolonged exposure to the water. The depth of the water in the lake at all locations, excluding only its sloped shoreline edges, shall be not less than eight feet (8'); and the average depth of the water in the lake, computed with respect to its entire surface area, shall not be less than fifteen feet (15'). No part of the water surface of the lake shall be closer than two hundred feet (200') to any boundary line of the land, nor closer than 200 feet from the north ^{top} of the dike referred to in paragraph 7. The lake shall contain no islands and its average width shall be not less than the smaller of five hundred feet (500') or one-fifth (1/5) of its length. JP 4

9. As a result of its operations on the land and as one of the end products thereof, Lessee shall also construct on the land prior to the termination of this Lease, at Lessee's sole and exclusive cost and expense, one (1) single continuous road (hereinafter referred to as the road) connecting with the public roadway where Highway 31 intersects 180th Street. The road shall be in all respects such as to provide suitable access to, and road frontage for, each of the house sites hereinafter referred to in paragraph 10 hereof and shall meet all of the other requirements of this paragraph. The road shall be properly compacted and properly sloped for drainage and shall be not less than forty feet (40') wide measured at its narrowest point. The driving surface of the road shall be not less than thirty feet (30') wide measured at its narrowest point and all portions of the driving surface shall have an elevation of not less than eighteen inches (18") above the 100 year flood level, shall be covered with gravel or other similar suitable material sufficient in kind and quantity so that two-wheel drive passenger automobiles can successfully travel thereon under all weather conditions and shall be smooth, regular and even. Portions of the road may be located on the top of the dike at Lessee's option; provided, however, that no part of the road shall be closer than sixty feet (60') to the exterior (river side) edge of the top of the dike at any point. No part of the driving surface of the road shall be closer than fifty feet (50') to the water surface of the lake at any point. The location of the road shall be designated by and acceptable to the Trust.
10. As a result of its operations on the land and as one of the end products thereof, Lessee shall also create and prepare on the land prior to the termination of this Lease, at Lessee's sole and exclusive cost and expense, lots for the construction of homes (hereinafter referred to as the house sites) which shall be in all respects suitable for residential housing development and shall meet all of the other requirements of this paragraph. The total number of house sites shall be fifteen (15) more than the total number of acres occupied by the water surface of the lake. (Examples: The total number of required house sites shall be 40 if the lake is 25 surface acres, 55 if the lake is 40 surface acres and 70 if the lake is 55 surface acres). The house sites may but need not be contiguous and some may be contiguous, and others non-contiguous, at Lessee's option. Each house site shall be located between the road and the lake and shall abut upon both thereof with a minimum road frontage of not less than one hundred feet (100') on one end, a minimum lake frontage of not less than one hundred feet (100') on the other end and a minimum depth of not less than one hundred fifty feet (150') measured between the water surface of the lake and the road at their closest point. The two (2) sides of each house site shall be laid out in straight lines with each side connecting a point on the edge of the road with a point on the edge of the lake and the minimum distance between these two sides of each house site

shall be not less than one hundred feet (100') at their closest point. All those portions of each house site which are located more than fifty feet (50') from the lake shall have an elevation of not less than eighteen inches (18") above the 100 year flood level or such higher elevation as may be necessary in order that a single family residence constructed at grade level thereon will qualify for flood insurance in accordance with all applicable state and federal elevation requirements existing as of the date of termination of this Lease; no two (2) points within this area of each house site shall vary in elevation more than three feet (3') from each other; and no point within this area of each house site shall vary in elevation more than three feet (3') from any point on the driving surface of the road located within a distance of two hundred feet (200') thereof. Those portions of each house site lying within fifty feet (50') of the lake shall be sloped downward to the lake in a smooth, regular and even fashion and as gently as possible. No portion of any house site shall be subject to water drainage from rain falling on the road, dike or any other area more than fifty feet (50') beyond the boundaries of such house site. Each house site shall be properly compacted and graded to a smooth, regular and even surface and shall be suitable in all respects for the construction of a single family residence in conformance with all applicable zoning, building and other similar governmental regulations in effect on the date this Lease terminates, except only those regulations requiring minimum lot sizes greater than specified herein (100' X 150'). Lessee shall not plat or subdivide any portion of the land in contemplation of, or to facilitate, the Trust's subsequent residential development thereof, but the house sites shall be in all respects such as to permit the Trust to plant and subdivide the same in conformance with all applicable governmental regulations existing as of the date this Lease terminates, except only those regulations requiring minimum lot sizes greater than specified herein (100' X 150'), if the Trust chooses to do so.

11. The Trust reserves the right of entry upon the land at all times by its representatives for inspection and all other reasonable management purposes and also reserves the rights to lease and otherwise fully use and enjoy any and all portions of the land at all times and for all purposes not inconsistent with Lessee's operations thereon. Lessee shall pay for all damages to all growing crops and appraisable improvements of the Trust's present surface tenant caused by Lessee's operations under this Lease and after due notice thereof shall protect and indemnify the Trust from all claims of such nature. In lieu of paying for the damages to any such item, Lessee may purchase the same if Lessee and the Trust's surface tenant so agree; and any such purchase shall be reported to the Trust in writing by Lessee. At the expiration or termination of the lease now held by the Trust's present surface tenant, the total value of the appraisable improvements than owned by such surface tenant and located on the land will be determined in accordance with law and Lessee shall within thirty (30) days thereafter purchase all of such appraisable improvements from the Trust's surface tenant for the total value thereof as so determined. Thereafter, Lessee shall have no further obligations pursuant to this paragraph and specifically, in any manner limiting the generality of the foregoing, Lessee shall have no further obligation to pay for any damages to any growing crops or improvements subsequently placed on the land by any tenant of the Trust.

12

12. At Lessee's request, the Trust shall join with Lessee in applying for any and all permits and authorizations from all applicable governmental authorities which may be appropriate in conjunction with Lessee's operations on the land; provided however, that no such joinder shall be required by the Trust if such joinder, on the issuance of any such permit or authorization pursuant thereto or as a result thereof, would impose on the Trust, or expose it to, any actual or potential liability, obligation or responsibility of any kind or nature whatsoever; and provided, further, that the failure of Lessee to obtain any such permit or authorization shall not excuse Lessee from its obligation to fully perform all terms and conditions of this Lease. The provisions of the last two (2) sentences of paragraph 8 hereof, which pertain only to the requirement that Lessee armor the dike and any federal permits or authorizations which may be necessary with respect thereto, take precedence over this paragraph.

13. All topsoil and overburden removed and not used in constructing the dike, lake, road and house sites shall be stockpiled by Lessee for future reclamation use. All disturbed areas other than the dike, lake, road and house sites shall be reclaimed by Lessee as provided in this paragraph at Lessee's sole and exclusive cost and expense. Upon the termination of this Lease, or upon the completion of production from any particular area of significant size, whichever first occurs, the area shall be covered with not less than eight inches (8") of topsoil, graded to a smooth, regular and even surface with slopes as gentle as possible, seeded with a mixture of native or other grasses approved in advance by the Trust and mulched, all in accordance with specifications and recommendations of the Natural Resource Conservation Society (NRCS) for critical area seeding. All portions of the top of the dike which are not also utilized as part of the road shall be seeded and mulched in the same manner. Any seeded area with respect to which the initial seeding and mulching is unsuccessful shall be seeded and mulched a second time in accordance with the Trust's direction and applicable specifications and recommendations of the NRCS. In addition, but not as an alternative, to the other requirements of this paragraph, all disturbed areas not encompassed within the dike, lake, road and house sites shall be reclaimed in accordance with all sand and gravel industry standards existing as of the date such reclamation occurs. Lessee shall exercise reasonable care and diligence in planning and carrying out the reclamation process to reduce the amount of stockpiled topsoil and overburden remaining after the reclamation process is completed; and all excess topsoil and overburden so remaining shall be either stockpiled on the land at the direction of the Trust and for the Trust's later use, or removed from the land by Lessee, at the Trust's option. At the termination of this Lease, Lessee shall surrender possession of the land to the Trust with the dike, lake, road and house sites all properly maintained and in good and serviceable condition, and with all other reclamation work completed, all without the necessity of any demand by the Trust so long as the Trust has received all necessary governmental permits for their construction.

14. Lessee owns land immediately adjacent to the subject land on the west, and hereby grants to Lessor and its tenants, for the duration of this lease, an easement from runway 31 onto Barr Lane, and from Barr Lane onto a non-dedicated but existing east-west road running across Lessee's property to the west property line of Lessor's property. This easement will be personal to Lessor and its tenants and guests and

Ag

shall not be for the benefit of any other persons, and shall terminate when this lease terminates.

15. All of Lessee's operations on the land shall be conducted with reasonable diligence, care and skill in accordance with all existing sand and gravel industry standards and in conformance with all applicable governmental laws, rules, regulations, ordinances and other requirements with respect to all matters and things affecting the land and Lessee's operations thereon including, but not limited to, those pertaining to public safety, health and welfare and protection of the environment. Lessee shall make adequate provisions to accommodate all natural water drainage and drainage ways across the land existing as of the inception of this Lease.

16. In addition to the monthly reports and accountings required by paragraph 4 hereof, Lessee shall make work progress reports to the Trust on or before December 1 of each year and shall furnish the Trust such additional reasonable written reports concerning such matters and at such times as the Trust may request including, but not limited to, plats, maps, drawings and similar items clearly and accurately showing all development work on the land and other related information. All reports shall be filed by Lessee with the Trust at the place of residence of Francis T. Kennedy and Isabelle Kennedy, 18206 West Highway 31, Springfield, Nebraska 68059 and Isabelle Kennedy, 4917 South 143rd Street, Omaha, Nebraska 68137. Lessee shall also permit the Trust to examine all of Lessee's books and records pertaining to operations and production pursuant to this Lease and to make copies and extracts therefrom as and when the Trust so desires.

17. Lessee shall save and hold harmless, indemnify and defend the Trust and its members, employees and representative, in both their official and individual capacities, of and from any and all suits, claims, demands, liabilities, losses, damages, out of, or directly or indirectly connected with Lessee's operations and activities, on or off the land, pursuant to this Lease, all regardless of the presence or absence of negligence or other fault on the part of Lessee.

18. Lessee shall not sublease any portion of the land. Neither this Lease nor any interest therein may be assigned by Lessee, in whole or in part, without the prior written consent and approval of the Trust, payment of a filing and recording fee in the amount then specified by the Trust, and the execution of a Lease and the furnishing of bond by the assignee.

19. Lessee shall furnish and maintain in full force and effect throughout the entire duration of this Lease, bond to be approved by the Trust in the principal sum of One Hundred Thousand Dollars (\$100,000) conditioned upon the faithful compliance by Lessee with all terms and conditions of this Lease.

20. No surrender or other termination of this Lease shall be permitted except as provided in this paragraph. SEPTEMBER 7 of each year shall be the anniversary date of this Lease and SEPTEMBER 7 of every third year shall be the renewal date of this Lease. Lessee may notify the Trust, in writing, at any time that this Lease will terminate on its next anniversary date for the reason that all performance by Lessee

2h

will then be fully complete, in which event this Lease shall terminate on such next anniversary date and all performance by Lessee shall be due and must be completed as of that date. Lessee may also surrender this Lease to the Trust at any time if all performance by Lessee is then fully complete, in which event this Lease shall terminate on the date of such surrender and all performance by Lessee shall be due and must be completed as of that date. Upon the failure of Lessee to obtain a renewal of this Lease on any renewal date, this Lease shall terminate on such renewal date and all performance by Lessee shall be due and must be completed as of that date. In addition, this Lease shall be subject to termination by the Trust for the failure of Lessee to progress with due diligence, the failure of Lessee to make any required payment or report to the Trust, the filing by Lessee of any report with the Trust which is untrue as to any material fact, or the failure of Lessee to abide by and fully perform any or all of the other terms and conditions of this Lease; provided, however, that no such termination of the Lease shall occur without the Trust first giving advance written notice to Lessee and allowing Lessee a reasonable time, not to exceed sixty (60) days in any event, in which to fulfill any obligation with respect to which Lessee is in default except only the obligation to pay annual rental concerning which no prior notice shall be required. No surrender or other termination of this Lease shall (a) excuse Lessee from its obligation to fully perform all terms and conditions of this Lease or excuse any non-performance thereof by Lessee, or (b) preclude the Trust from bringing any action against Lessee for the breach by Lessee of any covenant of this Lease and all damages sustained by the Trust by reason thereof including, but not limited to, all damages sustained by the Trust by reason of any failure by Lessee to pay all rental and royalty due to the Trust and to also fulfill all other requirements of this Lease including, but not limited to, all of the requirements of paragraphs 8, 9, 10, 11 and 14 hereof.

21. This Lease shall extend to and be binding upon Lessee and the Trust and the successors and assigns of each of them.

IN WITNESS WHEREOF, the Trust and Lessee have executed this Lease and affixed their seals hereto in duplicate originals on the date first above written.

ISABELLE C. KENNEDY TRUST

By *Isabelle C. Kennedy, Trustee*
Francis C. Kennedy, Trustee

CONCRETE INDUSTRIES, INC.,
A Nebraska Corporation, DBA
Western Sand & Gravel Company
1815 Y Street
Lincoln, NE 68508
Telephone: 402-434-1212
Fed. ID# 47-0429184

By *James P. [Signature]*
As President
JPK

Sarpy County Board of Commissioners
 Planning Department Report
 County Board Meeting Date: July 2, 2013

Subject	Type	By
Conservation and Preservation Easement Agreement between Francis T. & Margaret R. Kennedy and the Nebraska Land Trust	Public Hearing and Resolution	Bruce Fountain, AICP, EDFP Director, Planning & Building Dept.

➤ **Summary and Purpose:**

Francis T. & Margaret R. Kennedy, the property owners, are seeking to dedicate a conservation easement over their property to the Nebraska Land Trust for perpetual preservation. They are asking the County to approve the proposed Conservation and Preservation Easement agreement and find that it is in conformance with the Sarpy County Comprehensive Plan and Zoning Regulations.

➤ **Background and Analysis:**

The detailed staff report on this request was presented to the Planning Commission at their June 19, 2013 meeting and is attached for your information and review.

➤ **Staff Recommendation:**

Staff recommends **APPROVAL** of the Conservation and Preservation Easement agreement between the Kennedys and the Nebraska Land Trust as it is consistent with the Sarpy County Comprehensive Plan's future land use designation of Conservation Residential and is in conformance with the County's Zoning Regulations. The County Attorney's staff also has reviewed the document and does not request any revisions.

➤ **Planning Commission Recommendation:**

On June 19, 2013 the Planning Commission voted 7-0 to recommend **APPROVAL** of the Conservation and Preservation Easement agreement between the Kennedys and the Nebraska Land Trust as it is consistent with the Sarpy County Comprehensive Plan as well as the Zoning Regulations.

Ackley moved, seconded by Malmquist to APPROVE the Conservation and Preservation Easement agreement between the Kennedy's and the Nebraska Land Trust as it is consistent with the Sarpy County Comprehensive Plan's future land use designation of Conservation Residential as well as the County's Zoning Regulations. **Ballot:** Ayes – Bliss, Lichter, Ackley, Whitfield, Mohr, Malmquist, and Farrell. Nays – none. Abstain – None. Absent – Stuart, Murante, Fenster and Torczon. **Motion carried 7-0-4.**



**SARPY COUNTY PLANNING
& BUILDING DEPARTMENT**

RECOMMENDATION REPORT

**KENNEDY CONSERVATION &
PRESERVATION EASEMENT (MISC 13-0001)**

PLANNING COMMISSION HEARING: JUNE 19, 2013

I. GENERAL INFORMATION

A. APPLICANTS:

The Nebraska Land Trust
c/o Dave Sands
9200 Andermatt Dr., Suite 7
Lincoln, NE 68526

Francis T. and Margaret R. Kennedy
Co-Trustees Revocable Trust
18206 West Highway 31
Springfield, NE 68059

B. PROPERTY OWNER:

Francis T. and Margaret R. Kennedy
Co-Trustees Revocable Trust
18206 West Highway 31
Springfield, NE 68059

C. LEGAL DESCRIPTION: See Exhibit A of the Conservation and Preservation Easement document

D. SUBJECT PROPERTY LOCATION: Parcels are generally located along both sides of Highway 31 immediately to the west of 180th Street. (see attached maps).

E. SUBJECT PROPERTY SIZE: Approximately 262 acres.

F. EXISTING ZONING AND FUTURE LAND USE DESIGNATIONS:

- Zoning: AG (Agricultural Farming District) & AG-FP (Agricultural Farming – Floodplain District)
- Future Land Use Designation: Conservation Residential to the north of Highway 6 and Greenway to the south of Highway 6

G. REQUESTED ACTION(S): To find the proposed Conservation and Preservation Easement in conformance with the Sarpy County Comprehensive Plan and Zoning Regulations.

H. PURPOSE OF REQUEST: To dedicate a conservation easement over the landowner's property to the Nebraska Land Trust for perpetual conservation and preservation.

II. BACKGROUND INFORMATION

A. EXISTING CONDITION OF SITE: The subject property consists of the family farmstead home and agricultural ground as well as areas of woodlands

containing important wildlife habitat and native flora and fauna. A portion of the property along the Platte River is lake area from previous mining operations and there is also a small parcel along the river with a small cabin on it.

B. SURROUNDING AREA ZONING AND LAND USES:

- North: AG (Agricultural District) – undeveloped farm land and woodlands
- East: AG (Agricultural District) – undeveloped woodlands
- South: AG-FP (Agricultural Farming – Floodplain District) – undeveloped farm land, small lake and Platte River
- West: AG (Agricultural Farming District) & AG-FP (Agricultural Farming – Floodplain District) – undeveloped farm land and mining operation

C. APPLICABLE REGULATIONS:

- Section 9, Sarpy County Zoning Regulations, regarding the AG (Agricultural Farming) District
- Section 30, Sarpy County Zoning Regulations regarding Floodplain Development Districts
- Sarpy County Comprehensive Plan

III. ANALYSIS / STAFF COMMENTS

A. GENERAL:

- The request to dedicate this conservation and preservation easement is by the property owners who have negotiated terms with the Nebraska Land Trust as specified in the attached Conservation and Preservation Easement document.
- The subject property of the request is in an area of the County that has several unique environmental and cultural features including woodlands, important bird and wildlife habitat, native vegetation, and historical sites. The perpetual conservation of this area is an ecological benefit in preserving some of Sarpy County's natural beauty.
- The Conservation and Preservation Easement restricts the construction of new structures outside of designated areas and does not allow logging or clearing outside of these designated building envelopes; prohibits commercial or industrial uses as well as commercial feed lots; and restricts commercial wind energy and solar power generation along with other uses that could deteriorate the quality of the preserved land. Further detail is provided in the easement document.

B. COMPREHENSIVE PLAN: The request to conserve the property through a conservation and preservation easement is in conformance with the future land use designation of Conservation Residential.

C. OTHER AGENCY REVIEW/COMMENTS: The application was sent to each of the five cities in Sarpy County as well as other area jurisdictional agencies or departments that may have an interest. No responses were received, therefore indicating that they had no comments or objections to the application.

IV. PLANNING DEPARTMENT RECOMMENDATION:

Staff recommends **APPROVAL** of the Conservation and Preservation Easement agreement between the Kennedy's and the Nebraska Land Trust as it is consistent with the Sarpy County Comprehensive Plan's future land use designation of Conservation Residential as well as the County's Zoning Regulations. The County Attorney's staff also has reviewed the document and does not request any revisions.

V. PLANNING COMMISSION RECOMMENDATION:

MOTION: Ackley moved, seconded by Malmquist to APPROVE the Conservation and Preservation Easement agreement between the Kennedy's and the Nebraska Land Trust as it is consistent with the Sarpy County Comprehensive Plan's future land use designation of Conservation Residential as well as the County's Zoning Regulations. **Ballot:** Ayes – *Bliss, Lichter, Ackley, Whitfield, Mohr, Malmquist, and Farrell*. Nays – none. Abstain – None. Absent – *Stuart, Murante, Fenster and Torczon*. **Motion carried 7-0-4.**

VI. ATTACHMENTS TO REPORT:

- A. Conservation and Preservation Easement Document
- B. Sarpy County Current Zoning Map
- C. Sarpy County Future Land Use Map

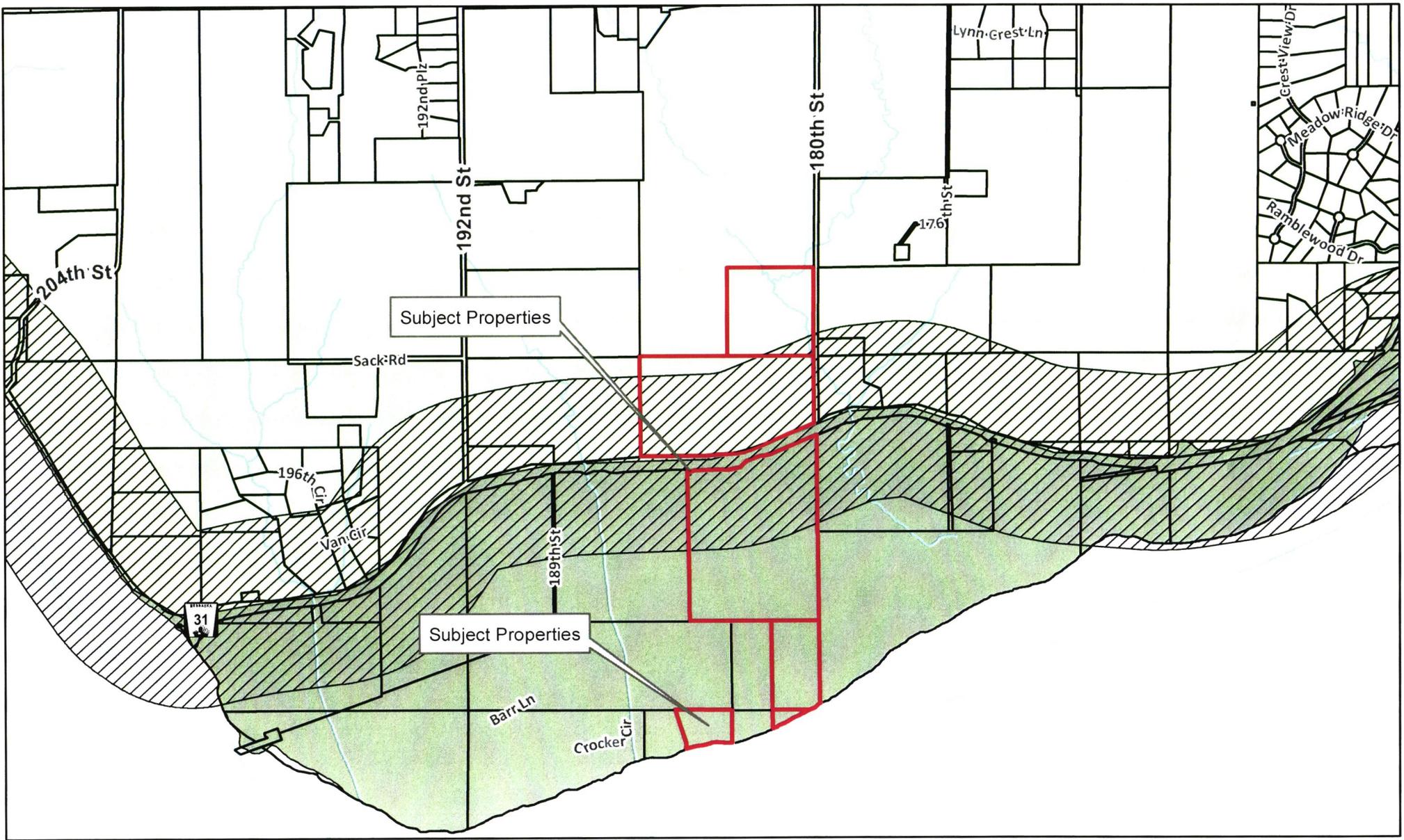
VII. COPIES OF REPORT SENT TO:

- A. Francis T. and Margaret R. Kennedy, property owners
- B. Dave Sands, Nebraska Land Trust
- C. Public Upon Request

Respectfully submitted by:



Bruce A. Fountain, AICP, EDFP
Director, Planning & Building Dept.



Current FLU - Sarpy Co

0 0.15 0.3 0.6 Miles

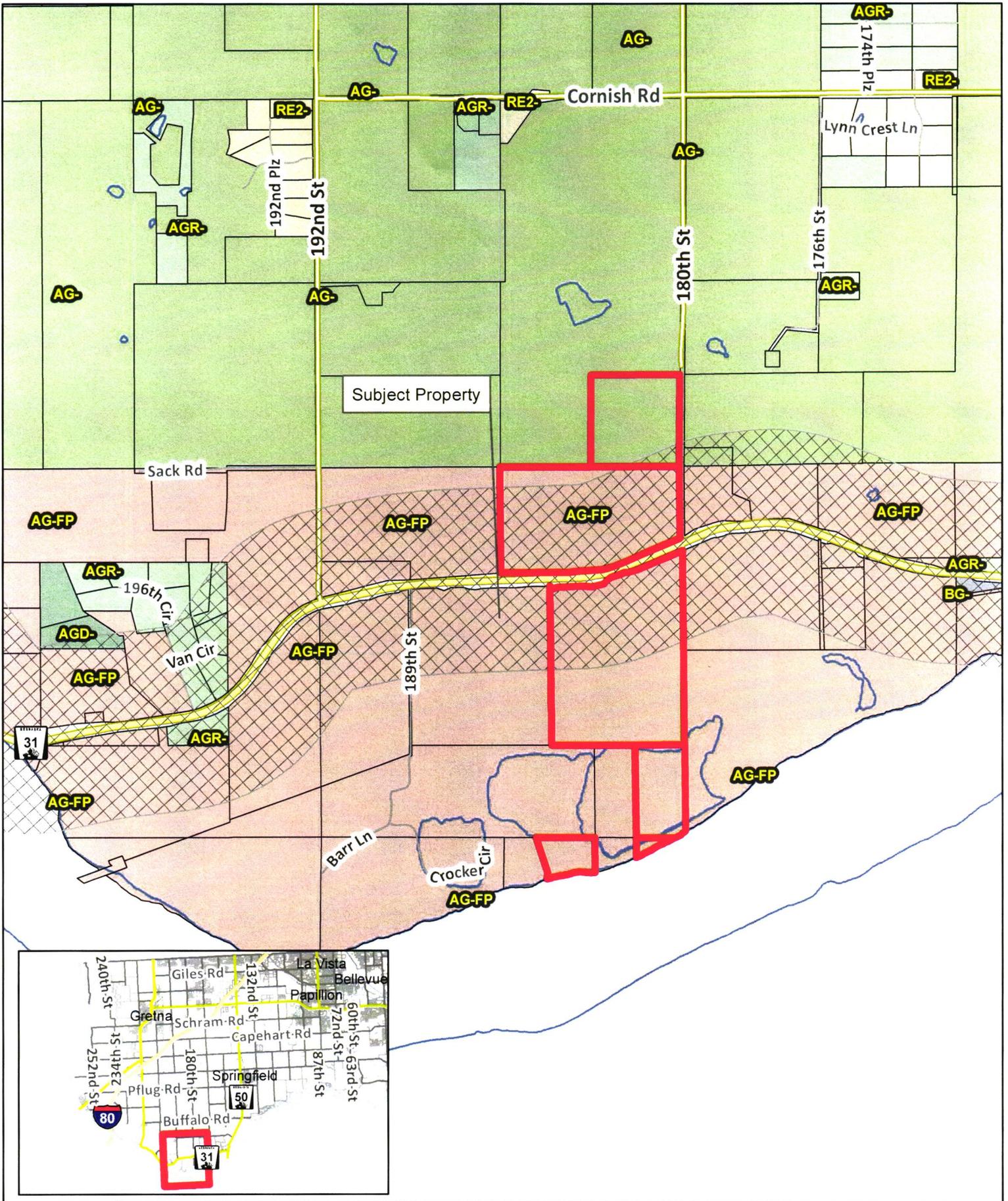


Kennedy- Conservation and Preservation Easement

Comprehensive Development Plan
Figure 5.1: Development Structure Plan
 Sarpy County, Nebraska

Legend

- | | | |
|--------------------------|---------------------------------|-----------------------|
| Highway Corridor Overlay | Long Term Residential Growth | Cross County Arterial |
| Bellevue Future Growth | Mixed Use | City Limit |
| Business Park | Mixed Use Center | City ETJ |
| Civic | New Richfield Village | |
| Conservation Residential | Park/School Site | |
| Estate Residential | Pflug Interchange Development | |
| Greenway | Residential - Community Systems | |
| Industrial | Urban Residential | |
| Light Industrial/Storage | Urban Residential II | |



Vicinity Map - Zoning
Kennedy
Conservation & Preservation Easement

 Sarpy Highway Corridor Overlay





SARPY COUNTY PLANNING DEPARTMENT

• 1210 Golden Gate Drive, Papillion, Nebraska 68046
• Phone (402) 593-1555 • Fax (402) 593-1558 • E-Mail: PLANNING@SARPY.COM

MISCELLANEOUS PERMIT APPLICATION

In order for your application to be considered **COMPLETE**, please answer all applicable questions and provide the following:

1. Submit complete Miscellaneous Permit Application
2. Submit Non-Refundable fee of \$ 100.00 made payable to Sarpy County Treasurer.
3. 1 Electronic copy of the drawing (PDF)
4. _____ full sized drawings depending on what the permit is for.

PLANNING STAFF USE ONLY:

Application No.: 11250 13-0001
 Date Received: 4/8/13
 CP Designation: Conservation Residential/Greenway
 Zoning Designation: AG & AG-FP
 FEE: \$ 100- Receipt NO. 1929
 Received By: RL
 NOTES: for 9/15/13 PC mtg.

APPLICANT INFORMATION:

NAME: FRANCIS T. KENNEDY

EMAIL: _____

ADDRESS: 18206 WEST HWY 31

CITY/STATE/ZIP: SPRINGFIELD, NE. 68069

MAILING (IF DIFFERENT)

ADDRESS: _____

CITY/STATE/ZIP: _____

PHONE: 402-253-8259

FAX: _____

PROPERTY OWNER INFORMATION: (If multiple owners, attach a separate sheet)

Please check box if attaching separate sheet with owner information

NAME: FRANCIS T. KENNEDY & MARGARET R. KENNEDY
CO-TRUSTEES REVOCABLE TRUST

EMAIL: _____

ADDRESS: 18206 WEST HWY 31

CITY/STATE/ZIP: SPRINGFIELD NE. 68069

MAILING (IF DIFFERENT)

ADDRESS: _____

CITY/STATE/ZIP: _____

PHONE: 402-253-8259

FAX: _____

ENGINEER INFORMATION:

NAME: _____

EMAIL: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

MAILING (IF DIFFERENT)

ADDRESS: _____

CITY/STATE/ZIP: _____

PHONE: _____

FAX: _____

PROJECT DESCRIPTION: (Describe the project in detail, including physical features of the site, proposed improvements, proposed uses or business, operating hours, number of employees, anticipated customers, etc. - Attach additional sheets if necessary.) PLEASE NOTE: A detailed project description is essential to the reviewing process of this request.

REQUEST APPROVAL OF A CONSERVATION EASEMENT
OVER LAND DESCRIBED IN LEGAL DESCRIPTION BELOW

PROJECT SITE INFORMATION: Complete each section in its entirety. If a question is not applicable to your project, please indicate this to show that each question has been carefully considered.

ASSESSOR'S PARCEL NUMBER: 010399240 / 011177438 / 010410651 / 011576969 / 011576963 / 011576965

ADDITIONAL PARCEL NUMBERS: _____

LEGAL DESCRIPTION: (Describe property to wit:)

1/4 SE 1/4 IN S8-T12-R11; TAX LOT 3A IN S17-T12-R11; TAX LOT 5 IN S17-T12-R11; TAX LOT 8 IN S17-T12-R11; GOV LOT
1A IN S-20-T12-R11; AND GOV LOT 1C IN S20-T12-R11. SEE ATTACHMENT FOR DETAILED LEGAL DESCRIPTION

GENERAL PROPERTY LOCATION: SOUTHWEST SARPY CTY, PLATFORD PRECINCT

ADDITIONAL INFORMATION: Please use this space to provide any other information you feel is appropriate for the County to consider during review of your application. Attach extra sheets if necessary.

THE FAMILY WOULD LIKE TO PRESERVE THE LAND FOR AGRICULTURE, WILDLIFE, THEN
SCENIC VIEWS FROM PUBLIC PLACES LIKE HIGHWAY 31 AND THE MOFAC TRAIL. THE LAND HAS BEEN
IN OUR FAMILY FOR ALMOST 100 YRS. WE ALSO WANT TO PRESERVE ALL THIS FOR OUR GRANDCHILDREN
AND GREAT GRANDCHILDREN

PLEASE NOTE THE FOLLOWING PROCEDURES:

1. The planning Commission will hold a public hearing and make a recommendation to the County Board.
2. County Board will hold a public hearing and make a final decision on the Miscellaneous Permit.
3. All necessary agreements will be recorded with the Sarpy County Register of Deeds, the cost of which will be borne by the Miscellaneous Permit applicant or the property owner.

I, the undersigned, understand a sign will be posted on my property and will remain until the public hearing process at the Planning Commission and County Board is complete. I further understand the Miscellaneous Permit process as stated above and I authorize County Staff to enter the property for inspection related to the specific request during this process.

Thomas P. Kennedy Jr.
Owner Signature (or authorized agent)

2-11-13
Date

Margaret Kennedy
Owner Signature (or authorized agent)

2-11-13
Date