

FILED

CONSERVATION EASEMENT

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CHARLOTTE L. PETERSEN
WASHINGTON COUNTY, NEBRASKA
CLERK

THIS GRANT OF A CONSERVATION EASEMENT is made by HEARTLAND
ACREAGE DEVELOPERS, INC., a Nebraska business corporation (hereinafter referred
to as "Grantor") to the AUDUBON SOCIETY OF OMAHA, a Nebraska non-profit
association, (hereinafter referred to as "Grantee").

1. Introductory Statement. This easement is granted pursuant to and in
accordance with Neb. Rev. Stat. §§76-2,111 to 76-3,118 (1990), the "Conservation and
Preservation Easements Act". The Grantee is a non-profit charitable association whose
purposes include protecting the natural and scenic condition of real property and
assuring its availability as wildlife habitat.

2. Easement Area Description. Grantor is the owner in fee simple of certain
real property, hereinafter referred to as the "Protected Property" which has wetlands,
grassland and woodlands in its present state as a natural area which has been subject to
limited suburban development. The Protected Property is subject to the easement
hereby granted and is described as approximately 52 acres located in the Allen Hills
Subdivision (the "Subdivision") of Washington County, Nebraska and is further
identified as "greenspace" on the final plat plan for the subdivision as filed in the land
records of Washington County. The Grantor, at its cost and expense, will have the
easement area surveyed and when the survey is completed, the legal description

Recorded
General
Numerical
Photostat
Proofed

191

STATE OF NEBRASKA COUNTY OF WASHINGTON) SS 990850
ENTERED IN NUMERICAL INDEX AND FILED FOR RECORD
THIS 19th DAY OF February A.D. 1999
AT 9:01 O'CLOCK A.M. AND RECORDED IN BOOK
297 AT PAGE 191-301
COUNTY CLERK Charlotte L. Petersen
DEPUTY Karen Madsen

contained in the survey will be substituted for the description contained herein by attaching the description hereto, without amending this Conservation Easement.

3. Granting Clause. Grantor hereby gives, grants, bargains, sells and conveys unto the Grantee as an absolute and unconditional gift in perpetuity, a Conservation Easement and to the Grantee's successors and assigns provided that this Conservation Easement may be assigned or transferred by the Grantee to any governmental body or charitable organization or trust authorized to hold such easement pursuant to the Conservation and Preservation Easements Act. Grantor hereby grants to the Grantee an estate and interest in the Protected Property of the type and to the extent hereinafter described and covenant on behalf of itself, its successors and assigns (said covenants, estates and interest to run with the land) with the Grantee and its successors and assigns, to do and refrain from doing, severally and collectively upon the Protected Property, the various acts hereinafter mentioned; it being hereby agreed that such covenants, estates and interest are and will be for the benefit of the Grantee and its successors and assigns, to preserve wildlife habitat, wetlands, grasslands and woodlands or otherwise conserve for the benefit of the public the natural scenery of the estate.

4. Grantee Acceptance. The Grantee signifies by the execution hereof, the acceptance of the Conservation Easement in the Protected Property, as provided for in the Conservation and Preservation Easements Act. The acceptance by the Grantee is conditioned upon the approval of the Conservation Easement by the Washington County Commissioners, as the appropriate governing body with jurisdiction over the

Protected Property as provided for in the Conservation and Preservation Easements Act. A copy of such approval will be attached hereto and incorporated herein by this reference, when it is received.

5. Justification for Conservation Easement. Grantor and Grantee recognize the natural, ecologic, educational and scenic character of the Protected Property, and have the common purpose of conserving the natural values of the Protected Property by the conveyance to the Grantee of this Conservation Easement on, over and across the Protected Property, which shall conserve and protect the wildlife habitat, wetlands, grasslands and woodlands or otherwise conserve for the benefit of the public the natural scenery and 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 its natural, scenic and open condition for both this generation and future generations.

6. Condition of the Protected Property at Time of Grant. The natural scenery, wildlife habitat, wetlands, grasslands and woodlands without limiting the generality of the terms, comprise the condition of the Protected Property at the time of this grant, evidenced by reports, photographs, maps and other documentation possessed (at the present) by the Grantee in the form of baseline data documents provided at grantor's expense to the Grantee at the time of the grant.

7. Protection and Maintenance of Protected Property.

a. Grantor, its successors and assigns, including specifically the Allen Hills Subdivision Homeowner's Association, its successors and assigns (all collectively

referred hereinafter as "Grantor") agree to pay any and all real estate taxes and assessments levied by competent authorities on the Protected Property, including, but not limited to any tax or assessment affecting the easement granted herein. Grantor further agrees to obtain, pay for, and continuously maintain liability and property insurance covering the Protected Property in an amount of at least \$500,000 per occurrence and \$1,000,000 in the aggregate. The foregoing limits shall be adjusted upward proportionately if insurance coverage otherwise carried by the Allen Hills Subdivision Homeowners Association is increased.

b. Heartland Acreage Developers, Inc. covenants that it is the owner of marketable title to all of the Protected Property and that such property is free and clear of all liens, taxes, encumbrances, reservations, restrictions, including oil, gas and mineral leases, and sand or gravel pumping leases. Grantor warrants that Grantor will defend said Protected Property against all claims of all persons, entities and agencies whatsoever. Grantor agrees to take no action at any time which might restrict, jeopardize or impair the value of the easement rights granted herein.

c. Grantor agrees that the terms, conditions, restrictions and purposes of this grant will be inserted by Grantor in any subsequent deeds, or other legal instrument, by which Grantor divests itself of either the fee simple title to or any possessory interest in the Protected Property.

d. The parties hereto may mutually agree to modify or terminate this Conservation Easement to the extent that modification and termination is consistent with the provisions of the Conservation and Preservation Easements Act and Section

170 of the Internal Revenue Code of 1986, as amended, and any comparable provision or any provision of law in effect at the time that such modification or termination is sought. Grantor or Grantee or their respective successors or assigns, may petition the District Court of the county where the property is located, in accordance with the Conservation and Preservation Easements Act, to modify or terminate this Conservation Easement if the petitioning party establishes that it is no longer in the public interest to hold the easement or that the easement no longer substantially achieves the preservation purpose for which it was created.

e. Grantor shall hold harmless, indemnify and defend Grantee, its assigns, lessees, devisees, invitees, employees, agents, personal representatives, heirs and successors of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of actions, claims, demands or judgments, including, without limitation, attorneys' fees, arising from or in any way connected with the death or injury of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Protected Property, arising out of interests in the Protected Property conveyed herein, provided that such act, omission, condition, or other matter is not caused, in whole or in part, by the gross negligence or willful misconduct of any of the Indemnified Parties. As between Grantor and Grantee, Grantor specifically assumes all liability for any damages, penalties, losses, costs and expenses incurred in the event of any injury or loss to any person or property which occurs on the Protected Property.

8. Inspections, Educational Use and Access by Grantee. Grantee is hereby given the right to enter the Protected Property at all reasonable times without consent for the purpose of inspecting the Protected Property to determine if there is compliance with the covenants and purposes of this grant or if any third party is infringing upon the grant.

Grantee shall have the right to enter the Protected Property in groups of no more than three unless larger groups are mutually agreed to, at all reasonable times upon notification to Grantor for the purpose of observing and studying nature and for the purpose of making scientific and educational observations and studies.

9. Use Restrictions. Grantor states that the following uses and practices, though not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purpose of this conservation easement and shall be prohibited.

a. Construction or placing of buildings, camping accommodations or mobile homes, fences, signs, billboard or other advertising material, or any other structure except as provided for herein,

b. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials, or the building of roads, or change in the topography of the land in any manner excepting the activities permitted under Section 10 hereof,

c. Dumping of ashes, trash, garbage, concrete or lawn waste or other unsightly or offensive material, and the changing of the topography through the placing of soil or other substances or material such as land fill or dredging spoils,

- d. Commercial development of any nature,
- e. Introduction of non-native plant species which may compete with and result in the decline or elimination of native plant species,
- f. Intentional introduction of non-native animal species, including domesticated animals, which may compete with and result in the decline or elimination of native animal species,
- g. Operation of motorized vehicles except as necessary in the use of the area as provided for herein,
- h. There shall be no hunting or trapping on the Protected Property at any time except for the trapping or other eradication of a pest species in which case the prior written consent of the Grantee must be obtained,
- i. The broadcast application of pesticides will not be permitted at any time. Spot application of pesticides for the control of "noxious weeds" as defined by the USDA office in Washington County, will be permitted provided such application does not extend further than 25 feet inside the boundary of the Protected Property, unless the Washington County Weed Control Officer or other similar official orders otherwise.
- j. The cultivation, planting or drilling of row crops, small grains and forages such as alfalfa and forage sorghum will not be permitted on the Protected Property,

k. No clearing, pruning or grubbing of trees and shrubs shall take place within 25 feet inside the boundary of the Protected Property without the prior written consent of the Grantee.

l. Grantor may, with the prior written consent of the Grantee, such consent not to be unreasonably withheld, at its expense, construct and maintain within the Protected Property underground cables and underground transmission lines for electrical, cable television, telephone and other electronic services. Grantor may enter the Protected Property with the prior written consent of Grantee, such consent not be unreasonably withheld, to maintain or replace equipment presently located therein.

10. Rights Reserved. This Conservation Easement shall confine the use of Grantor and Grantee to activities which are consistent with the purposes for which the easement was granted. The following uses and practices, though not an exhaustive recital of consistent uses and practices, are consistent with this Conservation Easement and these practices may not be precluded, prevented or limited by the Conservation Easement:

a. Grantor shall allow woodland succession to proceed without any management or manipulation;

b. Grantor shall periodically, at its expense, manage the woodland tract to prevent or reduce the risk of potential liability from dead, rotting or wind-blown trees within the area that is not more than 25 feet from the boundary of the Protected Property. Any proposed management activity beyond the first 25 feet of the said boundary requires the prior consent of the Grantee. A mowing schedule will be

coordinated between the Grantor and Grantee for the Protected Property that is beyond the first 25 feet of the said boundary.

c. Grantor shall periodically, at its expense, mow the grassland areas to prevent the excessive growth of grass to prevent fire hazards from developing.

11. Release of Easement. This Conservation Easement may be released by the Grantee upon the approval of the governing body which approved the easement, and a finding by such body that the easement no longer substantially achieves the conservation or preservation purpose for which it was created, in accordance with the Conservation and Preservation Easements Act, or as authorized by any other provision of the law in effect at the time such release is sought.

12. Enforcement Grantor agrees that the Grantee may enforce the provisions of this easement by any proceeding at law or in equity, including but not limited to, the right to require restoration of the Protected property to either the condition at the time of this grant, or any other improvements made pursuant to provisions herein. Grantor further agrees that the Grantee may seek an injunction restraining any person from violating the terms of this Conservation Easement and that the Grantee may be granted such injunction without the posting of any bond whatsoever. Grantor further agrees that the Grantee does not waive or forfeit the right to take any action as it deems necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Grantor further agrees that should it undertake any activity requiring the approval of the Grantee without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement, that

Grantee shall have the right to enforce the restoration of that portion of Grantor's land affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and the Grantee's cost of suit, including reasonable attorney's fee shall be paid by Grantor whether or not Grantee secures redress by a completed judicial proceeding.

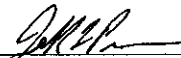
13. Binding Effect. The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this grant shall be binding upon Grantor, its agents, representatives and assigns, and all other successors to them in interest and shall continue as a servitude running in perpetuity with the Protected Property.

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

15. Advertising and Publicity. The Grantor will not use the Grantee's name in any advertising or brochures without the consent of the Grantee.

IN WITNESS WHEREOF, ^{PROSS} ~~JEFF PROSS~~ has set his hand this 23 day of NOVEMBER, 1998.

HEARTLAND ACREAGE
DEVELOPERS, INC.

By: 
Its President

STATE OF NEBRASKA)
)ss:
COUNTY OF Douglas

On this 23rd day of November, 1998, before me, a Notary Public in and for said county and state, personally came Jeff L. Pruess, President of Heartland Acreage Developers, Inc., a Nebraska business corporation, and acknowledged the execution of the same to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

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

Richard A. Ankils
Notary Public



ACCEPTANCE

The above Conservation Easement is hereby accepted by the Audubon Society of Omaha herein on this 27 day of DECEMBER, 1998.

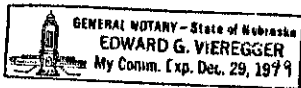
AUDUBON SOCIETY OF OMAHA

By: Lisa Peterson, PRESIDENT
Its President

STATE OF NEBRASKA)
)ss:
COUNTY OF DOUGLAS

On this 27 day of DECEMBER, 1998, before me a Notary public in and for said county and state, personally came LISA PETERSON of the Audubon Society of Omaha, to me personally known to be the identical person whose name is affixed to the above Conservation Easement and he acknowledged the execution hereof to be his voluntary act and deed as such officer and the voluntary act and deed of the Audubon Society of Omaha.

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



Edward G. Vieregger
Notary Public