

**DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted effective this \_\_\_\_ day of \_\_\_\_\_, 2002, by [Landowner] Cherry County, Nebraska, hereinafter referred to as Grantor, to NIOBRARA COUNCIL, a Nebraska Political Subdivision, hereinafter referred to as Grantee, with its principal office located at 111 East 3<sup>rd</sup> Street, Valentine, Nebraska, for the purpose of forever conserving the open space character, natural and productivity, wildlife habitat and scenic qualities of the subject property.

WITNESSETH, THAT WHEREAS, Grantor is the owner, in fee simple, of real property described as follows, to-wit: [Legal Description of land], which real property consists of approximately [number of acres] of real estate, together with buildings and other improvements located thereon, and through which real property the Niobrara River passes, all of which is located within Cherry County, Nebraska, and,

WHEREAS, Niobrara Council is a political subdivision, having been created by statute of the State of Nebraska, for the purpose of assisting in the Niobrara Scenic River Designation Act of 1991, as amended, United States Code, Chapter \_\_\_\_\_, Section \_\_\_\_\_; and,

WHEREAS, the real property owned by Grantor is primarily open ranch land, is located close to the city of Valentine, Nebraska, and has historically been used as productive agricultural land within Cherry County, Nebraska; and,

WHEREAS, the property is particularly unique with regard to scenic qualities, natural habitat, wildlife species and other agricultural, ecological and important environmental characteristics; and,

WHEREAS, said real property is suitable for residential development; and,

WHEREAS, Grantor desires to grant, in perpetuity, to the Niobrara Council or its successors in interest, certain rights, titles and privileges in and to the use and development of the described property; and,

WHEREAS, the Niobrara Council, having statutory authority to hold conservation easements and to protect property in perpetuity does accept the same; and

WHEREAS, the Niobrara Council has determined that said property possesses particular

natural, scenic, open space, educational and/or recreational values (collectively, conservation values) of great importance to the Grantor, the people of Cherry County, Nebraska, and the people of the State of Nebraska, generally; and,

WHEREAS, the specific conservation value of the property are further documented in an inventory of relevant features of the property, dated the \_\_\_\_ day of \_\_\_\_\_, 200 \_\_, which inventory of relevant features is attached hereto, marked Exhibit "A" and incorporated herein by this reference, and which Exhibit "A" consists of reports, maps, photographs and other documentation that the parties hereto agreed to provide, collectively, as an accurate representation of the property at the time of this grant in which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant and for evaluating development and improvement of said real property; and,

WHEREAS, Grantor intends that the conservation values of the property be preserved and maintained by permitting only those land uses on the property that do not significantly impair or interfere with the conservation values of said property, including, without limitation those land uses related specifically to ranching and residential development, as exists at the time of this grant; and,

WHEREAS, Grantor further intends, as owner of the property, to convey to Grantee the right to preserve and protect the conservation values of the property, in perpetuity.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the law of the State of Nebraska, and in particular Section 76-2, 111, et. seq., Neb. Rev. Stat. 1943 R.R.S. 2001:

1. Grantor hereby voluntarily gives, grants, bargains and conveys to Grantee a conservation easement, in perpetuity over and across the property above described, of the nature, character and to the extent as hereinafter set forth (easement).

2. PURPOSE. It is the purpose of this easement to assure that the property will be maintained forever in its natural, scenic, agricultural and open condition, subject to described development opportunities, and to prevent any use of the property that will significantly impair or interfere with the conservation values of the property. Grantor intends that this easement will confine the use of the property to such activities, including without limitation, those involving

ranching and residential development, as are not inconsistent with the purposes of this easement.

Specific intentions of preservation goals are:

To provide secure and undisturbed nesting and feeding area for bald eagles and other endangered or threatened avian species, to protect the scenic view of the Niobrara River, to protect the scenic view from the Niobrara River, to preserve the agricultural use and pristine agricultural condition of the tract, to minimize development and impact of development on the river, including the view shed, to provide for future controlled use and development of the tract, to allow limited private access, to develop controlled use and access to the river, not to exceed two access points, to prohibit public use of the tract and to prohibit canoe and watercraft access to the Niobrara River, to protect the river bank and to prevent and restrict activities that impact the condition of the river bank and the river proper, and to limit the use of the premises to single and multiple family dwellings as hereinafter established, and to limit agricultural use to cattle and/or horses, in such quantities as may be necessarily determined to be good husbandry as established and determined by the United States of America, Farm Services Administration, Valentine Office, or any similar or succeeding public, governmental organization.

3. **RIGHTS OF GRANTEE.** To accomplish the purpose of this easement, the following rights are conveyed to Grantee by this easement:

1. To preserve and protect the conservation and scenic values of the property as hereinafter set forth;
2. To enter upon the property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this easement in accordance with Section \_\_\_\_\_ (Provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate or mitigate a violation of this easement, such entry shall be upon reasonable, prior notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the property); and,
3. To prevent any activity on or use of the property that is inconsistent with the purpose of this easement, to require the restoration of such areas or features of the property that may be damaged by any inconsistent activity or use pursuant to the remedies as set forth in Section \_\_\_\_\_ hereof.

4. **PROHIBITED USES.** Any activity on or use of the property inconsistent with the

purpose of this easement is specifically and strictly prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

1. Accumulation of trash, refuse, junk, hazardous chemicals or waste or other unsightly material is not permitted on the property;
2. Display of billboards, signs or other advertisements is not permitted on the property, except to state the name and address of the owner, to advise the name of the entity holding the conservation easement, to advertise the sale or lease of the property, to advertise sale of goods or services produced incidental to the permitted use of the property or to provide necessary notification for the protection of the property and for giving directions to visitors. No such sign shall exceed three feet by three feet in size and shall be of such design, construction, material, form and location as to be minimally invasive to the scenic qualities of the described real property;
3. Grating, blasting or earth removal should not alter the topography of the property except for normal agricultural operations and to implement conservation practices approved by the Grantee;
4. Mining on the property is prohibited. Mining shall be defined to include removal of stone, gravel or sand;
5. No temporary or permanent building or structure shall be built or maintained on the property other than:  
(quantity and location)  
(1) Single and multiple family dwellings and out buildings commonly and appropriately incidental thereto, not to exceed 3,000 square feet for single family dwellings and 5,000 square feet for multiple family dwellings in area, and not to be visible from the Niobrara River and not within 200 feet of the west waterline of the Niobrara River, together with necessary access ways, which shall be of natural material (no concrete, oil or asphalt) and on the west side of any such development. Also, to limit vehicular access to residents and their guests, agents and invites;

(2) Industrial or commercial activities other than ranching and permanent dwelling houses are prohibited. Recreational activities, shall be limited to

\_\_\_\_\_

(hiking trails and canoeing);

(3) The establishment or maintenance on the property of any commercial feedlot or other concentrated animal feeding operation housing at any time more than five animal units (defined as \_\_\_\_\_) is prohibited. A concentrated animal feeding operation is defined as \_\_\_\_\_.

Degradation or erosion or significant depletion or pollution of any surface or subsurface waters is prohibited; provided: This prohibition shall not be construed as extending to agricultural operations and practices that are substantially in accord to area with any farm conservation plan prepared by the United States Department of Agriculture or the State of Nebraska Department of Environmental Quality, or any successor or equivalent agency which is reviewed and updated whenever substantial change in operations is contemplated but in any case no less often than every ten years or any use for activity on the property that causes or is likely to cause significant soil degradation or erosion. The maximum number of animals to be on the place at any one time will be determined by USDA, and Farm Services Administration, and its successors. Additionally, all such actions, uses and so on shall be subject to and limited to those requirements established by Niobrara Council, a Nebraska political subdivision, and Cherry County, Nebraska, zoning regulations, as the same may currently exist, or as may be amended, from time to time.

5. RESERVED RIGHTS. Grantors reserve to themselves and to their personal representatives, heirs, successors and assigns, all rights accruing from their ownership of the property including the right to engage in or permit or invite others to engage in all use of the property that are not expressly prohibited herein and are not inconsistent with the purpose of this easement. Without limiting the generality of the foregoing and subject to the terms of paragraph

3 the following rights are expressly reserved:

1. To reside on the property;
2. To develop the property for residential purposes outside of one-quarter mile from the west edge of the water of the Niobrara River and then in a fashion that will be of such style, type, method, manner and material for construction which is compatible to the nature of the real property which is the subject matter of this agreement, and only if the development shall be screened by natural vegetation from the Niobrara River;
3. Except as prohibited by paragraph \_\_\_ above, to engage in any and all agricultural uses of the property. Agricultural uses are defined as the business and science of breeding, feeding, pasturing of livestock, pasturing of buffalo, elk and other animals, dairying, raising and management of poultry, fish, bees and other animals, dairying, raising and management of poultry, fish, bees and other animals, truck farming, forestry or orchards and the non-commercial storage and processing of agricultural products produced on the premises, including accessory uses customarily associated with these activities in Cherry County, provided that such use shall not include any confined animal feeding operation, as defined in Section 303.24 of this Resolution, or intensive animal feeding operation, as defined in Section 303.42 of this Resolution. A confined or intensive animal feeding use, as defined in Sections 303.24 and 303.42 respectively, shall not be considered an agricultural use, but shall be considered a commercial use. The confinement of an unrestricted number of ruminant animals in lots or pens normally used for growing crops or vegetation for birthing, weaning or backgrounding purposes for less than two hundred ten (210) days in any calendar year shall not be considered a confined or intensive animal feeding use.
4. To engage in any business that is conducted by and in the home of a person residing on the property and which occupies structures used principally for

agricultural purposes which are acceptable and allowed on the real property in questions, or residential purposes;

5. To engage in and permit others to engage in recreational uses of the property including without limitation, hunting, fishing, site seeing, hiking and canoeing, but only if the same require no service alteration or other development of the land.
6. All regulations established by Cherry County, Nebraska, zoning regulations, as amended from time to time, shall apply to any uses retained by Grantor.

6. NOTICE AND APPROVAL. Notice of intention to undertake certain permitted actions. Grantor shall notify Grantee prior to undertaking certain permitted activities as provided herein. The purpose of this requirement is to afford Grantee an opportunity to monitor the activities in question and insure they were designed and carried out in a manner that are not inconsistent with the purposes of this easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than 90 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, time table and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this easement.

6.1. Grantee shall grant or withhold its approval in writing within 30 days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon reasonable determination by Grantee that the action, as proposed by Grantor, would be inconsistent with the purposes of this easement.

#### 7. GRANTEE'S REMEDIES.

7.1. NOTICE OF VIOLATION; CORRECTIVE ACTION. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the property resulting from any use or activity inconsistent with the purpose of this easement, to restore the portion of the property so injured to its prior condition in accordance with a plan approved by Grantee.

7.2. **INJUNCTIVE RELIEF.** If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30 day period, fail to begin curing such violation within the 30 day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the property to the condition that existed prior to any such injury.

7.3. **DAMAGES.** Grantee shall be entitled to recover damages for violation of the terms of this easement or injury to any conservation values protected by this easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the property.

7.4. **EMERGENCY ENFORCEMENT.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the property, Grantee may pursue its remedies under this section 7 without prior notice to Grantor or without waiting for the period provided for cure to expire.

7.5. **SCOPE OF RELIEF.** Grantee's rights under this section 7 apply equally in the event of either actual or threatened violations of the terms of this easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 7.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

7.6. **COSTS OF ENFORCEMENT.** All reasonable costs incurred by Grantee in enforcing the terms of this easement against Grantors, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this easement shall be borne by Grantor; provided, however,



that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.

7.7. **FORBEARANCE.** Forbearance by Grantee to exercise its rights under this easement in the event of any breach of any term of this easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this easement or of any of Grantee's rights under this easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

7.8. **WAIVER OF CERTAIN DEFENSES.** Grantor hereby waives any defense of laches, estoppel, or prescription.

7.9. **ACTS BEYOND GRANTOR'S CONTROL.** Nothing contained in this easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes.

8. **ACCESS.** No right of access by the general public to any portion of the property is conveyed by this easement.

9.1. **COSTS, LEGAL REQUIREMENTS, AND LIABILITIES.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the property, including the maintenance of adequate liability insurance coverage (with Grantee named as an additional insured on all such liability insurance policies). Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantors shall keep the property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantee shall be liable for any costs, losses or damages occurring by virtue of Grantee's use of the premises, except, Grantor shall remain responsible for,

liable for, and shall hold Grantee harmless for any loss, damage or injury suffered on the premises, except that loss due to Grantee's negligent acts.

9.2. TAXES. Grantor shall pay before delinquent, all taxes, assessments, fees, and charges of whatever description levied on or assessed against the property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this easement; and shall furnish Grantee with satisfactory evidence of payment upon request.

9.3. REPRESENTATIONS AND WARRANTIES. Grantor represents and warrants that, after reasonable investigation and to the best of their knowledge:

7. Any handling, transportation, storage, treatment of use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the property prior to the date of this easement has been in compliance with all applicable federal, state, or local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance or toxic waste has occurred on or from the property, which is free of all such contamination;
8. There are not now any underground storage tanks located on the property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the property in a manner not in compliance with applicable federal, state, and local laws, regulations and requirements;
9. Grantor and the property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the property and its use;
10. There is no pending or threatened litigation in any way affecting, involving, or relating to the property; and
11. No civil or criminal proceedings or investigations have been initiated, or investigated at any time or are now pending, and not notices, claims,

demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

9.4. REMEDIATION. If, at any time, there occurs, or has occurred, a release in, on, or about the property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

9.5. CONTROL. Nothing in this easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the property, or any of Grantor's activities on the property, or otherwise to become an operator with respect to the property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and (**corresponding state statute \_\_\_\_\_**).

9.6. HOLD HARMLESS. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death 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 property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any

state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and corresponding state statute by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the property; (3) the presence or release in, on, from, or about the property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of paragraphs 9.1 through 9.5.

#### 10. EXTINGUISHMENT AND CONDEMNATION.

10.1. **EXTINGUISHMENT.** If circumstances arise in the future that render the purpose of this easement impossible to accomplish, this easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the easement, or proportionate part thereof, as determined in accordance with paragraph 10.2.

10.2. **VALUATION.** This easement constitutes a real property interest immediately vested in Grantee. The parties [do/do not] establish a fair market value. Grantor is transferring this easement to Grantee for [consideration]. Values at the time of this grant shall be determined by Grantor and at the sole expense of Grantor for any federal income tax purposes allowed by reason of this grant. Allocation and determination of ratio of Grantor's retained interest to Grantee's interest conveyed hereunder, and valuation of the same shall be the sole obligation of Grantor. Grantee shall not be obligated to nor otherwise provide any information or cost of the same. Grantee agrees to cooperate with Grantor in any such determination by Grantor, except as herein provided.

10.3. **CONDEMNATION.** If all or any part of the property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this easement, in whole or in part, Grantor and

Grantee shall act jointly to recover the full value of the interests in the property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio established by Grantor's appraisal. If no appraisal is accomplished, then in that event, the ratio shall be one-half to one-half for Grantee's and Grantor's interests.

10.4. APPLICATION OF PROCEEDS. Grantee shall use any proceeds received under the circumstances described in this section 10 in a manner consistent with its conservation purposes, which are exemplified by this grant.

11. ASSIGNMENT. This easement is transferable, but Grantee may assign its rights and obligations under this easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under state statute (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least 20 days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of this easement or limit its enforceability in any way.

12. SUBSEQUENT TRANSFER. Grantor agrees to incorporate the terms of this easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least 20 days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this easement or limit its enforceability in any way.

13. ESTOPPEL CERTIFICATES. Upon request by Grantor, Grantee shall within twenty days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this easement or otherwise evidences the

status of this easement. Such certification shall be limited to the condition of the property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within \_\_\_\_\_ days of receipt of Grantor's written request therefor.

14. **NOTICES.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: [Name}

To Grantee: [Name]

or to such other address as either party from time to time shall designate by written notice to the other.

15. **RECORDATION.** Grantee shall record this instrument in a timely fashion in the official records of Cherry County, Nebraska, and may re-record it at any time as may be required to preserve its rights in this easement.

16. **GENERAL PROVISIONS.**

16.1. **CONTROLLING LAW.** The interpretation and performance of this easement shall be governed by the laws of the State of Nebraska.

16.2. **LIBERAL CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this easement shall be liberally construed in favor of the grant to effect the purpose of this easement and the policy and purpose of (state statute). If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

16.3. **SEVERABILITY.** If any provision of this easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this easement, or the application of such provision to persons or circumstances other than those as to

which it is found to be invalid, as the case may be, shall not be affected thereby.

16.4. ENTIRE AGREEMENT. This instrument sets forth the entire agreement of the parties with respect to the easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement, all of which are merged herein. (No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph \_\_\_\_ hereof, and then only if signed by the party against whom or which enforcement is sought).

16.5. NO FORFEITURE. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

16.6. JOINT OBLIGATION. The obligations imposed by this easement upon Grantor shall be joint and several.

16.7. SUCCESSORS. The covenants, terms, conditions, and restrictions of this easement shall be binding upon the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and her personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

16.8. TERMINATION OF RIGHTS AND OBLIGATIONS. A party's rights and obligations under this easement terminate upon transfer of the party's interest in the easement or property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

16.9. CAPTIONS. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

16.10. COUNTERPARTS. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

Grantor specifically agrees, regarding the property and the cleanup of the dump site

located thereon by Grantee, which is Grantee's consideration for the conveyance of this easement, as follows:

1. Grantor will hold Grantee, its agents, employees and assigns harmless from any liability or injuries suffered by virtue of cleanup of the dump site located on the described property, including the area worked on, trees, shrubs, grass, trails or roads and etc., into the work site;
2. Grantee agrees to hold the Grantor harmless from any liability for hazardous material and solid waste issues including petroleum or whatever chemicals that may be located upon or discovered on the real property in the cleanup provided by Grantee;
3. Grantor will not perform any development for residential purposes within one-fourth mile, or such distance as may comprise the Niobrara Scenic River corridor, as determined by the United States of America Department of the Interior, National Parks Service, from time to time. Additionally, such development shall comply with all terms established herein, and all Cherry County Nebraska zoning, as the same may exist from time to time, together with amendments thereof. Not more than \_\_\_\_\_% shall be visible from four (4) feet above the water line of the Niobrara River, at a location on the west edge of the river;
4. Grantor agrees that any development upon the premises will be residential in nature and will be screened by appropriate live, vegetative screening from which the source cannot be visible from the Niobrara River.
5. Grantee agrees that in the event hazardous materials or substances are located in the dump site that Grantee or its agents or assigns will clean up the area as provided by law and will hold Grantor harmless from any liability or responsibility for cleanup of the same.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, first above written.



\_\_\_\_\_  
[Name] Grantor

NIOBRARA COUNCIL, a Nebraska  
Political Subdivision,

BY: \_\_\_\_\_  
[Name] Grantee

STATE OF NEBRASKA )  
  ) ss:  
COUNTY OF CHERRY )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by [Name], Grantor.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF NEBRASKA )  
  ) ss:  
COUNTY OF CHERRY )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by [Name] a Nebraska Political Subdivision, Grantor.

\_\_\_\_\_  
NOTARY PUBLIC