

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the _____ day of _____, 20____, by and between the Omaha, Lincoln & Beatrice Railway, a Nebraska corporation, ("Owner") and the City of Lincoln, Nebraska ("City").

RECITALS

I.

Owner is the owner in fee simple of real property located in the Northwest Quarter of Section 18, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska within which a buffer strip preservation corridor upon the unnamed tributary to Deadman's Run is herein granted as more particularly described on Attachment A, attached hereto and incorporated herein by reference ("Easement Area").

II.

The City is authorized to accept and hold this Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easements Act.

III.

This Agreement has been submitted to the Lincoln-Lancaster County Planning Commission pursuant to the provisions of Neb. Rev. Stat. § 76-2,112 for review and recommendation and said Commission has found that the Conservation Easement is in conformance with the Lincoln City Comprehensive Plan.

IV.

The City Council of the City of Lincoln, Nebraska, has approved and accepted this Conservation Easement after duly considering the recommendations of the Lincoln City-Lancaster County Planning Commission and has authorized the Mayor to execute this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the mutual value to preserve the described channel corridors and for other good and valuable consideration, the receipt of which is hereby acknowledged, the City and Owner agree as follows:

1. Grant of Conservation Easement. Owner hereby creates, establishes, grants, and conveys to City for its benefit and the benefit of the public a conservation easement over the Easement Area to restrict the Easement Area to preserve the appropriate perennial and native grasses and forbes for stream channel and wildlife resources and to restrict development of the Easement Area subject to the following terms and conditions:

A. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area:

- i. Construction or placement of fill material, cement, buildings, fences, signs, or any other structure;
- ii. Commercial development of any nature;
- iii. Any other act which, in the opinion of the City, would be detrimental to the preservation of the appropriate perennial and native grasses and forbes for stream channel and wildlife resources within the Easement Area; and
- iv. Notwithstanding any provision herein to the contrary, Owner shall have the right to construct, repair, maintain and replace railroad trackage and switches within the Easement Area and shall have unlimited right of ingress and egress to operate and maintain its rail line through the Easement Area.

B. The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the City pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

2. Condition of the Easement Area at Time of Grant. The Easement Area, without limiting the generality of the terms used herein, is defined to mean the condition of the Easement Area following completion of the channel realignment project of the Joint Antelope Valley Authority (JAVA project 542320) as evidenced by the Compliance Certification of the Department of the Army, Corps of Engineers, Omaha District (File number NE-2002-10773).

3. Protection and Maintenance of the Easement Area. Owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area, including but not limited to any tax or assessment affecting the easement granted herein. Maintenance and protection of the Easement Area by the Owner shall be as provided in the grant above (1.A.); provided, the City shall be responsible for the restoration of appropriate native grasses and forbes in the Easement Area as the City may deem necessary or desirable.

4. **Inspection, Use and Access by City.** The City shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of inspecting, maintaining, and restoring the appropriate perennial and native grasses, at the City's sole cost and expense, within the Easement Area as the City may deem necessary or desirable.

5. **Enforcement.** Owner agrees that the City may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including but not limited to, the right to require restoration of the Easement Area to the condition at the time of this grant. Owner further agrees that the City may seek an injunction restraining any person from violating the terms of this Conservation Easement and that the City may be granted such injunction without posting of any bond whatsoever. Owner further agrees that the City 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. Owner further agrees that should Owner undertake any activity requiring the approval of the City without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City shall have the right to enforce the restoration of that portion of the Easement Area 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 City's cost of suit, including reasonable attorney fees, shall be paid by Owner.

6. **Title to Easement Area.** Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

7. **Binding Affect.** The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owner and City.

8. **Amendments.** This conservation easement may be changed, modified or revoked only upon written approval of the District Engineer of the Omaha District of the U. S. Army Corp of Engineers. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the laws of the State of Nebraska.

9. **Recordation.** The parties agree that this Agreement shall be duly filed by the City with the Lancaster County Register of Deeds upon execution and acceptance by the City.

10. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstance 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

OL&B Railway, Owner

By: _____
Title: _____

Attest:

CITY OF LINCOLN, NEBRASKA

City Clerk

By: _____
Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, [name & title], on behalf of OL&B Railway.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

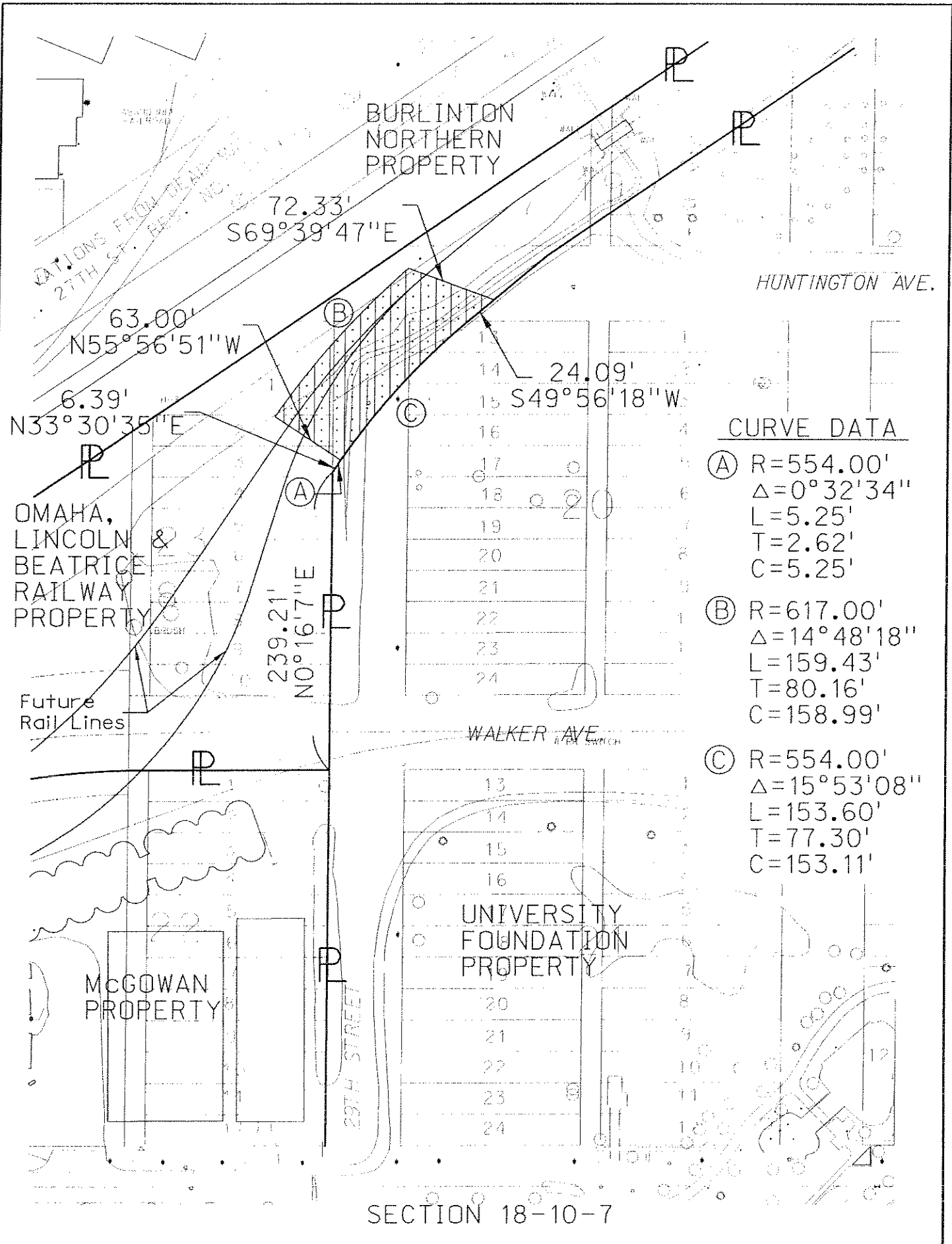
The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska on behalf of the City of Lincoln, Nebraska.

Notary Public

**PERMANENT EASEMENT
NW4 SECTION 18-10-7
OMAHA, LINCOLN AND BEATRICE RAILWAY CO.**

A PERMANENT EASEMENT TO A TRACT OF LAND FOR THE PURPOSE OF RESTRICTION AGAINST FUTURE DEVELOPMENT, AND TO GUARANTEE ITS PRESERVATION OF THE STREAM CHANNEL AND WILDLIFE RESOURCES, COMPOSED OF A PART OF LOTS 1-3 BLOCK 23, & A PART OF LOTS 13 & 14 BLOCK 20, ABBOTT & IRVINES ADDITION, ALSO A PART OF THE VACATED 29TH STREET AND VACATED HUNTINGTON AVENUE, LOCATED IN THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE SIXTH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

REFERRING TO THE NORTHEAST CORNER OF LOT 1 BLOCK 22 ABBOTT & IRVINES ADDITION, THENCE NORTHERLY ALONG THE WESTERLY RIGHT OF WAY LINE OF VACATED 29TH STREET ON AN ASSUMED BEARING OF NORTH 0 DEGREES 16 MINUTES 07 SECONDS EAST A DISTANCE OF 239.21 FEET TO A POINT, THENCE NORTH 33 DEGREES 30 MINUTES 35 SECONDS EAST A DISTANCE OF 6.39 FEET TO A POINT, THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT, DEFLECTION TO THE INITIAL TANGENT BEING 0 DEGREES 00 MINUTES 00 SECONDS RIGHT, SAID CURVE BEING TANGENT WITH THE LAST DESCRIBED LINE, HAVING AN ARC DISTANCE OF 5.25 FEET, A CENTRAL ANGLE OF 0 DEGREES 32 MINUTES 34 SECONDS AND A RADIUS LENGTH OF 554.00 FEET, THE CHORD OF SAID CURVE DEFLECTS 0 DEGREES 16 MINUTES 17 SECONDS RIGHT FROM THE PROLONGATION OF THE LAST DESCRIBED LINE, A DISTANCE OF 5.25 FEET THE POINT OF BEGINNING, THENCE NORTH 55 DEGREES 56 MINUTES 51 SECONDS WEST A DISTANCE OF 63.00 FEET TO A POINT, THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT, DEFLECTION TO THE INITIAL TANGENT BEING 90 DEGREES 00 MINUTES 00 SECONDS RIGHT, SAID CURVE BEING NON-TANGENT WITH THE LAST DESCRIBED LINE, HAVING AN ARC DISTANCE OF 159.43 FEET, A CENTRAL ANGLE OF 14 DEGREES 48 MINUTES 18 SECONDS AND A RADIUS LENGTH OF 617.00 FEET, THE CHORD OF SAID CURVE DEFLECTS 97 DEGREES 24 MINUTES 09 SECONDS RIGHT FROM THE PROLONGATION OF THE LAST DESCRIBED LINE, A DISTANCE OF 158.99 FEET, THENCE SOUTH 69 DEGREES 39 MINUTES 47 SECONDS EAST A DISTANCE OF 72.33 FEET TO A POINT, THENCE SOUTH 49 DEGREES 56 MINUTES 18 SECONDS WEST A DISTANCE OF 24.09 FEET TO A POINT, THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT, DEFLECTION TO THE INITIAL TANGENT BEING 0 DEGREES 00 MINUTES 00 SECONDS RIGHT, SAID CURVE BEING TANGENT WITH THE LAST DESCRIBED LINE, HAVING AN ARC DISTANCE OF 153.60 FEET, A CENTRAL ANGLE OF 15 DEGREES 53 MINUTES 08 SECONDS AND A RADIUS LENGTH OF 554.00 FEET, THE CHORD OF SAID CURVE DEFLECTS 7 DEGREES 56 MINUTES 34 SECONDS LEFT FROM THE PROLONGATION OF THE LAST DESCRIBED LINE, A DISTANCE OF 153.11 FEET, TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 10618 SQUARE FEET OR 0.24 ACRES MORE OR LESS.



BURLINGTON
NORTHERN
PROPERTY

HUNTINGTON AVE.

72.33'
S69°39'47"E

63.00'
N55°56'51"W

6.39'
N33°30'35"E

OMAHA,
LINCOLN &
BEATRICE
RAILWAY
PROPERTY

Future
Rail Lines

239.21'
N0°16'17"E

WALKER AVE.

MCGOWAN
PROPERTY

UNIVERSITY
FOUNDATION
PROPERTY

29TH STREET

CURVE DATA

(A) R=554.00'
Δ=0°32'34"
L=5.25'
T=2.62'
C=5.25'

(B) R=617.00'
Δ=14°48'18"
L=159.43'
T=80.16'
C=158.99'

(C) R=554.00'
Δ=15°53'08"
L=153.60'
T=77.30'
C=153.11'

SECTION 18-10-7

NATIVE GRASSES EASEMENT