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BLANKENAU WILMOTH  
JARECKE LLP

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March 7, 2022

**Don Blankenau**  
Direct: (402) 475-7081  
don@aqualawyers.com

Mr. Joe Pepplichtsch  
City Manager  
406 E. 7<sup>th</sup> Street  
Lexington, NE 68850

**RE: Release of Deed of Conservation Easement between Central Platte Natural Resources District and Buell, LLC, and Deed of Conservation Easement between Central Platte Natural Resources District and Buell, LLC**

Dear Mr. Pepplichtsch:

A few months ago we spoke on the phone regarding the movement of a conservation easement attached to 11.89 acres of land from one location to an adjoining tract of land all under a single ownership. The lands appear to be within the City's zoning jurisdiction. The land to which the conservation easement is presently attached is described in the enclosed Release of Conservation Easement. The number of acres to be released from the easement will be transferred to a new location – described in the enclosed Deed of Conservation Easement – so that the total number of acres subject to the easement will be unchanged. The landowner, Buell, LLC, desires this change to facilitate more effective irrigation on his operation. To complete this transfer, the Central Platte NRD will need the approval of the City of Lexington pursuant to Neb. Rev. Stat. § 76-2,112(3). Accordingly, this transfer is contingent upon the City's approval (and the approval of others).

Accordingly, please place this matter on the agenda for the next scheduled City Council meeting. Since this transfer of easement location is similar to previous transfers by the Central Platte NRD, we are not planning to have a representative present at the Council meeting, but we are happy to do so if you believe that would be helpful. For your convenience, we have prepared and enclosed a resolution for the Council to consider. If adopted by the Council, please mail or e-mail a copy to me. This process is contingent upon obtaining all approvals, including Dawson County, which is being concurrently pursued at this time.

Thank you for your attention to this matter. Please let me know if you have any questions or concerns.

Best Regards,



Donald G. Blankenau

## **PARTIAL RELEASE OF DEED OF CONSERVATION EASEMENT**

WHEREAS, the Central Platte Natural Resources District, a political subdivision of the State of Nebraska and Buell LLC, a Nebraska Corporation, have agreed that in consideration of the transfer of the terms and conditions of the Deed of Conservation Easement to an adjoining tract of real estate that the terms and conditions of the Deed of Conservation Easement previously executed by the prior owner and Central Platte Natural Resource District, and recorded in the Office of the Dawson County Register of Deeds on February 23, 2009 as Instrument Nos. 0518, 0519, 0520 shall be released as to the following described parcel of real estate only.

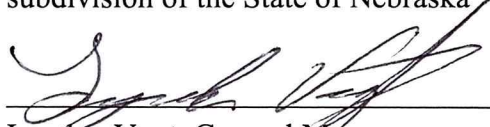
Now THEREFORE, in consideration of value received in accordance with the request and consent of the parties hereto, Central Platte Natural Resources District, a political subdivision of the State of Nebraska, hereby releases the following described real estate from the terms and conditions of the Deed of Conservation Easement, to-wit:

- 1) A tract of land in the Southeast quarter of the Northwest quarter of Section Twenty-Two (22), Township Nine (9) North, Range Twenty-Two (22) West of the 6<sup>th</sup> P.M., Dawson County, Nebraska totaling 1.42 acres;
- 2) A tract of land in the Northeast quarter of the Northwest quarter of Section Twenty-Two (22), Township Nine (9) North, Range Twenty-Two (22) West of the 6<sup>th</sup> P.M., Dawson County, Nebraska totaling 7.04 acres;
- 3) A tract of land in the Northeast quarter of the Southwest quarter of Section Fifteen (15), Township Nine (9), Range Twenty-Two (22) West of the 6<sup>th</sup> P.M., Dawson County, Nebraska totaling 3.42 acres.

*[Signatures on Following Page]*

Dated 17 day of February, 2022

CENTRAL PLATTE NATURAL  
RESOURCES DISTRICT, a political  
subdivision of the State of Nebraska

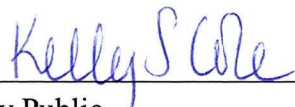
  
\_\_\_\_\_  
Lyndon Vogt, General Manager

STATE OF NEBRASKA     )  
  ) S.S.  
COUNTY OF Hall     )

Before me, a notary public qualified in said county, personally came Lyndon Vogt, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be a voluntary act and deed as such officer and the voluntary act and deed of said corporation.

Witness my hand and notarial seal on February 17, 2022.



  
\_\_\_\_\_  
Notary Public  
My commission expires:

**CONSENT TO PARTIAL RELEASE OF DEED  
OF CONSERVATION EASEMENT**

The undersigned, in accordance with the terms, conditions and provision of a certain Agreement by an among Central Platte Natural Resources District, the Nebraska Department of Natural Resources and the Nebraska Game and Parks Commission dated 6<sup>th</sup> day of January 2011, the Platte Basin Habitat Enhancement Project Interlocal Cooperation Agreement dated August 2, 2009 and 2009 Grant Contract with the Nebraska Environmental Trust, hereby consent to the release of the Deed of Conservation Easement to the specific lands described above, previously recorded with the Office of the Register of Deeds of Dawson County, Nebraska as Instrument No. 0519.

IN WITNESS WHEREOF, the undersigned has executed this instrument, or caused the due execution thereof, this \_\_\_ day of \_\_\_\_\_ 2022.

Nebraska Environmental Trust

Nebraska Department of Natural Resources

BY: \_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

STATE OF NEBRASKA     )  
  ) S.S.  
COUNTY OF \_\_\_\_\_ )

Before me, a notary public qualified in said county, personally came \_\_\_\_\_, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be a voluntary act and deed as such officer and the voluntary' act and deed of said corporation.

Witness my hand and notarial seal on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public  
My commission expires:

STATE OF NEBRASKA     )  
  ) S.S.  
COUNTY OF \_\_\_\_\_)

Before me, a notary public qualified in said county, personally came \_\_\_\_\_, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be a voluntary act and deed as such officer and the voluntary' act and deed of said corporation.

Witness my hand and notarial seal on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public  
My commission expires:

STATE OF NEBRASKA     )  
  ) S.S.  
COUNTY OF \_\_\_\_\_)

Before me, a notary public qualified in said county, personally came \_\_\_\_\_, known to me to be the identical person who signed the foregoing instrument, and acknowledged the execution thereof to be a voluntary act and deed as such officer and the voluntary' act and deed of said corporation.

Witness my hand and notarial seal on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public  
My commission expires:

COPY

## DEED OF CONSERVATION EASEMENT

This Deed of Conservation Easement (“Conservation Easement”) made this 17 day of Feb., 2022, by and between Buell LLC, a Nebraska Corporation (“Grantor”) and the Central Platte Natural Resources District, a political subdivision of the State of Nebraska, (“Grantee” or “District”).

WHEREAS, the District is a political subdivision of the State of Nebraska and is authorized by the State of Nebraska to acquire and dispose of water and water rights and regulate ground water;

WHEREAS, the District has established a management area pursuant to the Nebraska Ground Water Management and Protection Act; and

WHEREAS, the Grantor is the owner of real estate located within the geographic area included within the management area; and

WHEREAS, the Grantor wishes to convey a conservation easement to 11.89 acres of land to the District in exchange for the District relinquishing a previously conveyed conservation easement to 11.89 acres of land owned by the Grantor;

WHEREAS, all requirements imposed pursuant to the Nebraska Conservation and Preservation Easements Act, Neb. Rev. Stat. §§ 76-2,111 through 76-2,118 have been complied within that the location planning commission, if applicable, and the appropriate governing body have approved the Deed of Conservation Easement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and in receipt of the payment of valuable consideration to the Grantor by the Grantee, the receipt of which is hereby acknowledged, the Grantor and Grantee agree as follows:

1. The Grantor hereby assigns, transfers, and grants to the Grantee a Conservation Easement enforceable with respect to the Property of the Grantor described as follows:

A survey of a tract of land located in part of Government Lots 1 and 2 and accretion thereof, of Section 15, Township 9 North, Range 22 West of the Sixth Principal Meridian, Dawson County, Nebraska and more particularly described by metes and bounds as follows:

Beginning at a found rebar, being the West one-quarter corner of Section 15, Township 9 North, Range 22 West of the Sixth Principal Meridian, Dawson County, Nebraska; thence North 04 Degrees, 13 Minutes, 15 Seconds East and on the West line of said Section 15, a

distance of 582.21 feet to a set, capped  $\frac{5}{8}$ " rebar; thence South 52 Degrees, 26 Minutes, 46 Seconds East, a distance of 183.75 feet to a set, capped  $\frac{5}{8}$ " rebar; thence South 56 Degrees, 41 Minutes, 37 Seconds East, a distance of 156.72 feet to a set, capped  $\frac{5}{8}$ " rebar; thence South 73 Degrees, 24 Minutes, 53 Seconds East, a distance of 198.99 feet to a set, capped  $\frac{5}{8}$ " rebar; thence South 44 Degrees, 43 Minutes, 23 Seconds East, a distance of 172.79 feet to a set, capped  $\frac{5}{8}$ " rebar; thence South 68 Degrees, 09 Minutes, 43 Seconds East, a distance of 338.22 feet to a set, capped  $\frac{5}{8}$ " rebar; thence South 58 Degrees, 51 Minutes, 21 Seconds East, a distance of 131.32 feet to a set, capped  $\frac{5}{8}$ " rebar; thence South 70 Degrees, 41 Minutes, 27 Seconds East, a distance of 199.25 feet to a set, capped  $\frac{5}{8}$ " rebar; thence South 58 Degrees, 25 Minutes, 12 Seconds East, a distance of 224.56 feet to a set, capped  $\frac{5}{8}$ " rebar; thence South 61 Degrees, 16 Minutes, 52 Seconds East, a distance of 136.62 feet to a set, capped  $\frac{5}{8}$ " rebar; thence North 85 Degrees, 23 Minutes, 04 Seconds West, a distance of 1,570.79 feet to a set, capped  $\frac{5}{8}$ " rebar, being a point on the West line of said Section 15; thence North 04 Degrees, 13 Minutes, 41 Seconds East and on the West line of said Section 15, a distance of 113.77 feet to the point of beginning and containing a calculated area of 517,928.40 square feet or 11.89 acres, more or less, subject to easements and restrictions of record.

2. The terms, conditions, and restrictions of the Conservation Easement are as follows:
  - a. As used in this Conservation Easement, the term "water well" shall mean any water well as that term is defined in Nebraska statutes.
  - b. No water well capable of pumping more than 50 gallons per minute may exist or be constructed on the Property. Any water well that exists on the Property on the date of this Conservation Easement, and that is capable of pumping more than 50 gallons per minute, shall be decommissioned in accordance with all applicable statutes, rules, and regulations or permanently reduced in capacity so that it is incapable of pumping more than 50 gallons per minute. Except that any irrigation well existing on the Property on the date of this Conservation Easement that was previously used to irrigate other land in addition to the Property may continue to be used to irrigate the other land. Only land previously certified by the District for irrigation by that well may be irrigated. No additional land may ever be irrigated with the well. The pipes, pivots, and any and all other equipment formerly used to irrigate the Property must be permanently removed, detached, or otherwise disabled to the satisfaction of the District.



- c. Water wells capable of pumping 50 gallons per minute or less individually, but in excess of 50 gallons per minute collectively, may not be clustered or joined, nor may the water from such wells be commingled or in any other way combined unless the wells are used as described in Paragraph 2.b above.
- d. Water wells capable of pumping 50 gallons per minute or less may be used to provide water on the Property for (1) household and other domestic uses, or (2) watering range livestock.
- e. No use of the water from a natural stream, regardless of whether or not a permit for such use is required from the Nebraska Department of Natural Resources or any successor agency, shall be made on the Property except for providing water for range livestock on the Property.
- f. No water from any water well not located on the Property shall be used on the Property except for (1) household and other domestic uses, or (2) watering range livestock.
- g. The property must remain dryland agricultural production unless prior written approval is granted by the District to alter this prohibition. No crops, hay, grass, or other plants that could be subirrigated shall be grown on the Property. Only those items listed on Exhibit "A" may be grown on the property unless prior written approval is granted by the District.
- h. No use shall be made of the Property which will consume groundwater, including, but not limited to, the following:
  - i. No pits or other excavated areas that would expose or consume ground water shall be allowed;
  - ii. No mining, sand, or gravel operations shall be allowed;
  - iii. No industrial, commercial, agricultural, or residential development shall occur on the Property unless prior written approval is granted by the District.

3. This Conservation Easement shall be perpetual. It is appurtenant and runs with the land as an incorporeal interest in the Property and shall be enforceable against any owner or other person having any interest in the above described property including the Grantor, all persons or entities holding any interest acquired through the Grantor and all Grantor's heirs, successors, assigns, and personal representatives.

4. It is the Grantor's intent, through this Deed of Conservation Easement, to permanently transfer and surrender any rights that they or their successors, heirs, assigns, or personal representatives may have to irrigate or subirrigate the above-described property and to permanently prevent the development and use of any ground water for any uses on the Property or off, except those specifically permitted by Paragraph 2 above. The fact that the well or wells on



the Property have been decommissioned, reduced in pumping capacity to 50 gallons per minute or less, or are no longer used to irrigate the Property cannot be used to supply an offset to allow irrigation of any other land or any other water use or to justify construction of a new water well as a replacement.

5. Upon any breach of the terms of this Conservation Easement by the Grantor, the Grantee may, after reasonable notice to the Grantor, institute suits to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction either prohibitive or mandatory. The Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to the Grantee at law or equity. If the Grantor is found to have breached any of the terms of this Conservation Easement, the Grantor shall reimburse the Grantee for any costs or expenses incurred by the Grantee, including court costs and reasonable attorney's fees to the extent permitted by applicable law. No failure on the part of the Grantee to enforce any term of this Conservation Easement shall discharge or invalidate such terms or any subsequent breach or default.

6. The Grantee, acting by and through their respective employees and agents, have the right to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Grantor is complying with the terms of this Conservation Easement.

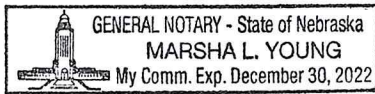
*[Signatures on Following Page]*

BUELL LLC, a Nebraska Corporation

*Rick Buell*  
Signature

STATE OF NEBRASKA )  
COUNTY OF Dawson ) ss.

The foregoing Deed of Conservation Easement was acknowledged before me on this 17 day of February 2022, by Rick Buell, on behalf of said corporation and known to me personally, or produced satisfactory evidence of identification, to be the same person.



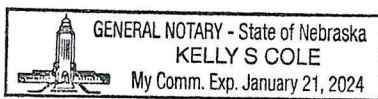
*Marsha L Young*  
Notary Public  
My commission expires: 12-30-22

Accepted for the CENTRAL PLATTE NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska

*Lyndon Vogt*  
Lyndon Vogt, General Manager

STATE OF NEBRASKA )  
COUNTY OF Hall ) ss.

The foregoing Deed of Conservation Easement was acknowledged before me on this 23 day of February 2022, by Lyndon Vogt, General Manager, on behalf of said organization and known to me personally, or produced satisfactory evidence of identification, to be the same person.



*Kelly S Cole*  
Notary Public  
My commission expires: