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PLACZEK & ALLEN**

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ESTABLISHED IN 1929

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SPECIAL COUNSEL

July 21, 2010

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

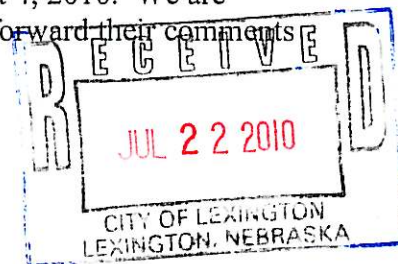
Re: Deed of Conservation Easement between Central Platte Natural Resource District and  
Kinnison, Kinnison & Stuart

Dear Mr. Pepplitsch:

Enclosed please find a copy of the above-referenced Deed of Conservation Easement which we have previously discussed.

As you are aware, NEB. REV. STAT. §76-2,112(3) provides that in order to minimize conflicts with land-use planning, all conservation easements have to be approved by the appropriate governing body, either the city or village if the property lies partially or entirely within the boundaries or zoning jurisdiction of a city or village; or the county, if the property lies entirely outside the boundaries and zoning jurisdiction of any city or village. In addition, the appropriate governing body shall first refer the proposed easement to and receive comments from the local planning commission with jurisdiction over the property. The local planning commission has 60 days to provide comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If comments are not received within this 60 day period, this easement will be deemed approved by the local planning commission.

It is my understanding that the real estate described on the enclosed Deed of Conservation Easement lies within the zoning jurisdiction of the City of Lexington. Accordingly, please place this matter on the agenda for the City Council meeting scheduled for July 27, 2010. It is my understanding that at this meeting the Deed of Conservation Easement will be referred to the City Planning and Zoning Commission for review and comments. It is my further understanding that the City Planning and Zoning Commission's next meeting is August 4, 2010. We are hopeful that the Planning and Zoning Commission will then be able to forward their comments



Mr. Joe Peplitsch  
July 21, 2010  
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and recommendations regarding this Easement to the City Council in order to be voted on at the City Council meeting on August 10, 2010. Since this easement is similar to easements we have utilized in the past, we will not have a representative from the Central Platte Natural Resources District attend any of these meetings unless you feel that it would be helpful.

Also enclosed please find a copy of the aerial photo and a zoning jurisdiction map showing the area of the proposed easement.

I appreciate all of your help and I look forward to working with you on these matters.

Very truly yours,

LEININGER, SMITH, JOHNSON,  
BAACK, PLACZEK & ALLEN



CATHLEEN H. ALLEN  
CHA/dlh/encls.

1754-39/315781



141.9

52.9

76.6

56.4

FRED R STUART

90.4

253.1

ANNE STUART KINNISON

127.4

130.7

ANNE STUART KINNISON

11

148.4

BETTY PRASCH

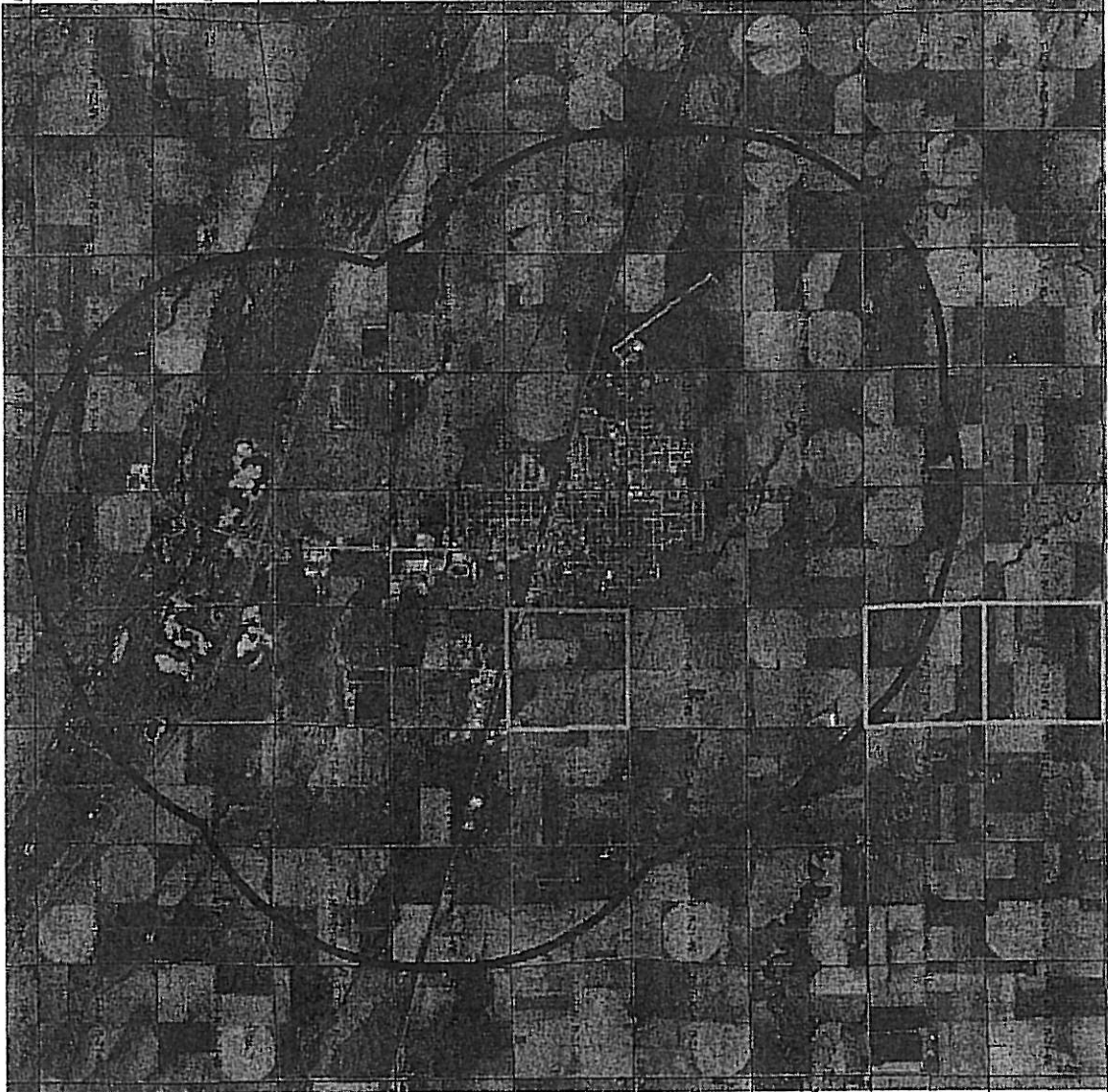
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90.7

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## **DEED OF CONSERVATION EASEMENT**

This Deed of Conservation Easement ("Conservation Easement") made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between KINNISON, KINNISON & STUART ("Grantor") and the Central Platte Natural Resources District, a political subdivision of the State of Nebraska, ("Grantee" or "District").

WHEREAS, the Central Platte Natural Resources 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 within management areas; and

WHEREAS, the State of Nebraska, Department of Natural Resources, the District, and other local and state agencies have entered into the Platte Basin Habitat Enhancement Project Interlocal Cooperation Agreement in order to more efficiently use their funds and powers to meet the terms of the Platte River Recovery Implementation Program and the requirements of the Nebraska Ground Water Management and Protection Act; and

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 and Grantee jointly recognize the necessity of conserving and managing the ground water within the geographic area covered by the management plan; and

WHEREAS, all requirements imposed pursuant to the Nebraska Conservation and Preservation Easements Act, NEB. REV. STAT. §§76-2,111 through 76-2,118 (Reissue 2009) have been complied with in that the local planning commission, if applicable, and the appropriate governing body have approved of this 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 (the Property) of the Grantor described as follows:

The Northeast Quarter (NE $\frac{1}{4}$ ) and that area of the North Half of the Northeast Quarter of the Southeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ ) lying north of the Beatty Ditch of Section Four (4), Township Nine (9) North, Range Twenty-One (21), West of the 6<sup>th</sup> P.M. in Dawson County, Nebraska.

2. The terms, conditions and restrictions of the Conservation Easement are as follows:

- a. Grantor hereby agrees to relinquish all claims to the right to divert surface water and apply it to the Property described hereinabove in accordance with any and all surface water appropriations granted by the Nebraska Department of Natural Resources, including, but not limited to, surface water appropriation number A-16685 with a priority date of July 12, 1988 and surface water appropriation number A-15659B with a priority date of June 19, 1980. Grantor further agrees to sign and deliver to the District for filing with the Nebraska Department of Natural Resources, all appropriate forms required by the Nebraska Department of Natural Resources to permanently and completely relinquish all surface water appropriations for the Property described hereinabove, including, but not limited to, surface water appropriation number A-16685 and surface water appropriation number A-15659B.
- b. Grantor further agrees that 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. Grantor further agrees that no applications for permits to appropriate surface water shall be applied for with the Nebraska Department of Natural Resources, or any successor agency, for the Property described hereinabove.

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 the above-described property with surface water except as allowed or permitted by the District in accordance with its rules and regulations.

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 term or any other term hereof or affect the right of the Grantee to enforce the same in the event of a 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.

7. The Grantor and the Grantee agree that the State of Nebraska, which may provide necessary funding for acquisition of this Conservation Easement, shall, if such funding is provided, be deemed and recognized as a third party beneficiary under this Conservation Easement. As such, the State of Nebraska, acting by and through the Department of Natural Resources and the Office of the Attorney General, shall have the right to enforce all of the terms of this Conservation Easement, against both the Grantee and the Grantor. In addition, this Conservation Easement may only be amended by a written document that is executed by the Grantor and the Grantee, approved by the Department of Natural Resources and recorded among the land records of the appropriate jurisdiction for the Property. Proof of the Department of Natural Resources' approval shall accompany or be attached to said document.

8. If at any time the Grantee intends to acquire the fee simple interest of the Property encumbered by this Conservation Easement, prior to any such conveyance of the fee simple interest, the Grantee shall assign its interest in this Conservation Easement to the Nebraska Game and Parks Commission or its successor state agency.

9. No transfers by sale, gift, exchange, or distributions as a result of death or otherwise, of the real estate described hereinabove may be made without prior notification to the Grantee, which notification shall include the name, address and telephone number of the person, persons, entity or entities, to whom said real estate is to be transferred.

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"Grantor"

STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Deed of Conservation Easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_, a \_\_\_\_\_, and known to me personally or produced satisfactory evidence of identification to me.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Accepted for the  
Central Platte Natural Resources District

By \_\_\_\_\_  
Ronald G. Bishop, General Manager

STATE OF NEBRASKA    )  
  ) ss:  
COUNTY OF HALL        )

The foregoing Deed of Conservation Easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by Ronald G. Bishop, General Manager of Central Platte Natural Resources District, a political subdivision of the State of Nebraska, on behalf of said Natural Resources District and known to me personally or produced satisfactory evidence of identification to me.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_