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SPECIAL COUNSEL

March 3, 2011

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

Re: Deed of Conservation Easement between Central Platte Natural Resource District as  
Grantee and Logan C. Kinnison, Anne Stuart Kinnison and Mary C. Stuart as Grantor

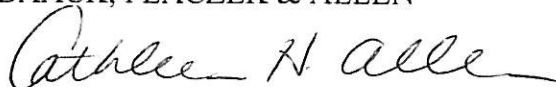
Dear Joe:

Due to the legal description error in the previous Resolution we sent to your office, please find enclosed an original and one copy of a revised Resolution in regard to the above-referenced easement. Please have the original and the copy of the Resolution signed by John Fagot and Pam Berke, and return a fully executed copy of the Resolution to me for recording with the Dawson County Register of Deeds when we are ready to close this transaction.

If you have any questions regarding the same, please do not hesitate to contact me.

Very truly yours,

LEININGER, SMITH, JOHNSON,  
BAACK, PLACZEK & ALLEN



CATHLEEN H. ALLEN  
CHA/dlh/encls.

cc: Mr. Ronald Bishop (w/encl.)  
Central Platte (Attn: Angela) (w/encl.)

1754-39/341549



RESOLUTION \_\_\_\_\_

A RESOLUTION APPROVING CONSERVATION EASEMENT FOR THE CENTRAL PLATTE NATURAL RESOURCES DISTRICT

WHEREAS, LOGAN C. KINNISON and ANNE STUART KINNISON, husband and wife, and MARY C. STUART, a single person, are the owners of the following described real estate, to-wit:

A tract of land in the East One-Half of Section Four (4), Township Nine (9) North, Range Twenty-One (21) West of the 6<sup>th</sup> P.M., Dawson County, Nebraska, and more particularly described as follows:

Referring to the North One-Quarter Corner of Section Four (4), Township Nine (9) North, Range Twenty-One (21) West of the 6<sup>th</sup> P.M., Dawson County, Nebraska; Thence S 0°45'11" W (an assumed bearing), and along the West Line of the Northeast Quarter of said Section Four (4), a distance of 50.00 feet, to the Point of Beginning; Thence continuing S 0°45'11" W, and along the West Line of the Northeast Quarter of said Section Four (4), a distance of 2598.37 feet, to the Center One-Quarter Corner of said Section Four (4); Thence S 89°31'46" E, and along the South Line of the Northeast Quarter of said Section Four (4), a distance of 791.20 feet; Thence N 05°28'14" E, a distance of 328.00 feet; Thence S 55°54'31" E, a distance of 590.13 feet; Thence S 89°31'46" E, and along the South Line of the Northeast Quarter of said Section Four (4), a distance of 94.20 feet; Thence S 18°47'51" E, a distance of 123.07 feet; Thence N 45°12'11" E, a distance of 163.53 feet; Thence S 89°31'46" E, and along the South Line of the Northeast Quarter of said Section Four (4), a distance of 106.00 feet; Thence S 55°12'36" E, a distance of 588.80 feet; Thence S 89°31'46" E, and parallel to the South Line of the Northeast Quarter of said Section Four (4), a distance of 27.00 feet; Thence N 01°16'59" E, and parallel to the East Line of the Southeast Quarter of said Section Four (4), a distance of 332.00 feet; Thence S 89°31'46" E, and along the South Line of the Northeast Quarter of said Section Four (4), a distance of 427.00 feet; Thence N 00°14'32" W, and parallel to the East Line of the Northeast Quarter of said Section Four (4), a distance of 2441.90 feet; Thence N 89°42'58" W, and along the South Line of part of Lots 4-26 of Bacon's Subdivision, and also parallel to the North Line of the Northeast Quarter of said

Section Four (4), a distance of 2211.02 feet; Thence S 00°17'02" W, a distance of 42.00 feet; Thence N 89°42'58" W, and parallel to the North Line of the Northeast Quarter of said Section Four (4), a distance of 310.00 feet; Thence N 00°17'02" E, and along the West Line of Lot 1 of Bacon's 1<sup>st</sup> Subdivision, a distance of 207.00 feet, to the Northwest Corner of Lot 1, Bacon's 1<sup>st</sup> Subdivision; Thence N 89°42'58" W, and parallel to the North Line of the Northeast Quarter of said Section Four (4), a distance of 47.90 feet, to the place of beginning and containing 145.23 acres, more or less, EXCEPT a tract of land in the Northeast Quarter (NE¼) of Section Four (4), Township Nine (9) North, Range Twenty-One (21) West of the Sixth Principal Meridian, Dawson County, Nebraska, more particularly described as follows: Referring to the Southwest corner of said quarter section thence S89°31'46"E (an assumed bearing and all bearings shown herein are relative thereto) on the south line of said Northeast Quarter a distance of 33.00 feet to the point of beginning said point is on the Easterly right of way of Spring Creek; thence continuing S89°31'46"E on said south line a distance of 505.48 feet; thence N01°19'38"E a distance of 517.30 feet to the Southerly right-of-way line of Nebraska Public Power District's irrigation lateral; thence N51°50'38"W on said south line a distance of 77.60 feet; thence N38°52'23"W continuing on said south line a distance of 131.80 feet; thence N31°52'22"W continuing on said south line a distance of 704.00 feet to the easterly right-of-way line of Spring Creek; thence S00°45'03"W on said line a distance of 1238.58 feet to the place of beginning. Said tract contains 10.11 acres, more or less.

WHEREAS, the Central Platte Natural Resources District is desirous of obtaining a conservation easement from LOGAN C. KINNISON and ANNE STUART KINNISON, husband and wife, and MARY C. STUART, a single person, on the real estate legally described hereinabove and LOGAN C. KINNISON and ANNE STUART KINNISON, husband and wife, and MARY C. STUART, a single person, is desirous of selling a conservation easement to the Central Platte Natural Resources District on the real estate legally described hereinabove; and

WHEREAS, Central Platte Natural Resources District and LOGAN C. KINNISON and ANNE STUART KINNISON, husband and wife, and MARY C. STUART, a single person, have submitted a request to The City of Lexington, Nebraska for the approval of a conservation easement on the real estate legally described hereinabove; and

WHEREAS, pursuant to NEB. REV. STAT. §76-2,112 (2003), on July 27, 2010, the City of Lexington forwarded the easement request to the City of Lexington Planning and Zoning Commission for their review and recommendations regarding the conformity of the proposed acquisition to comprehensive planning for the area; and

WHEREAS, also pursuant to NEB. REV. STAT. §76-2,112 (2003) on August 4, 2010, the City of Lexington Planning and Zoning Commission recommended approval of the easement at their regularly scheduled meeting; and

NOW, BE IT RESOLVED by the City of Lexington that the designated conservation easement on the real estate legally described hereinabove and more specifically set forth in the Deed of Conservation Easement attached hereto as Exhibit "A" and incorporated herein by this reference, should be, and hereby is, approved.

Resolution moved by Council Member \_\_\_\_\_

Seconded by Council Member \_\_\_\_\_

Vote:

Mayor Fagot:	For ____; Against ____; Abstained ____; Not Present ____
Council Member Tomasek:	For ____; Against ____; Abstained ____; Not Present ____
Council Member Bennett:	For ____; Against ____; Abstained ____; Not Present ____
Council Member Miller:	For ____; Against ____; Abstained ____; Not Present ____
Council Member Salem:	For ____; Against ____; Abstained ____; Not Present ____

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2011.

CITY OF LEXINGTON

\_\_\_\_\_  
John Fagot, Mayor

\_\_\_\_\_  
Pam Berke, City Clerk

1754-39/341505

**DEED OF CONSERVATION EASEMENT**

This Deed of Conservation Easement ("Conservation Easement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between LOGAN C. KINNISON and ANNE STUART KINNISON, husband and wife, and MARY C. STUART, a single person ("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:

A tract of land in the East One-Half of Section Four (4), Township Nine (9) North, Range Twenty-One (21) West of the 6<sup>th</sup> P.M., Dawson County, Nebraska, and more particularly described as follows:

Referring to the North One-Quarter Corner of Section Four (4), Township Nine (9) North, Range Twenty-One (21) West of the 6<sup>th</sup> P.M., Dawson County, Nebraska; Thence S 0°45'11" W (an assumed bearing), and along the West Line of the Northeast Quarter of said Section Four (4), a distance of 50.00 feet, to the Point of Beginning; Thence continuing S 0°45'11" W, and along the West Line of the Northeast Quarter of said Section Four (4), a distance of 2598.37 feet, to the Center One-Quarter Corner of said Section Four (4); Thence S 89°31'46" E, and along the South Line of the Northeast Quarter of said Section Four (4), a distance of 791.20 feet; Thence N 05°28'14" E, a distance of 328.00 feet; Thence S 55°54'31" E, a distance of 590.13 feet; Thence S 89°31'46" E, and along the South Line of the Northeast Quarter of said Section Four (4), a distance of 94.20 feet; Thence S 18°47'51" E, a distance of 123.07 feet; Thence N 45°12'11" E, a distance of 163.53 feet; Thence S 89°31'46" E, and along the South Line of the Northeast Quarter of said Section Four (4), a distance of 106.00 feet; Thence S 55°12'36" E, a distance of 588.80 feet; Thence S 89°31'46" E, and parallel to the South Line of the Northeast Quarter of said Section Four (4), a distance of 27.00 feet; Thence N 01°16'59" E, and parallel to the East Line of the Southeast Quarter of said Section Four (4), a distance of 332.00 feet; Thence S 89°31'46" E, and along the South Line of the Northeast Quarter of said Section Four (4), a distance of 427.00 feet; Thence N 00°14'32" W, and parallel to the East Line of the Northeast Quarter of said Section Four (4), a distance of 2441.90 feet; Thence N 89°42'58" W, and along the South Line of part of Lots 4-26 of Bacon's Subdivision, and also parallel to the North Line of the Northeast Quarter of said Section Four (4), a distance of 2211.02 feet; Thence S 00°17'02" W, a distance of 42.00 feet; Thence N 89°42'58" W, and parallel to the North Line of the Northeast Quarter of said Section Four (4), a distance of 310.00 feet; Thence N 00°17'02" E, and along the West Line of Lot 1 of Bacon's 1<sup>st</sup> Subdivision, a distance of 207.00 feet, to the Northwest Corner of Lot 1, Bacon's 1<sup>st</sup> Subdivision; Thence N 89°42'58" W, and parallel to the North Line of the Northeast Quarter of said Section Four (4), a distance of 47.90 feet, to the place of beginning and containing 145.23 acres, more or less, EXCEPT a tract of land in the Northeast Quarter (NE¼) of Section Four (4), Township Nine (9) North, Range Twenty-One (21) West of the Sixth Principal Meridian, Dawson County, Nebraska, more particularly described as follows: Referring to the Southwest corner of said quarter section thence S89°31'46"E (an assumed bearing and all bearings shown herein are relative thereto) on the south line of said Northeast Quarter a distance of 33.00 feet to the point of beginning said point is on the Easterly right of way of Spring Creek; thence continuing S89°31'46"E on said

south line a distance of 505.48 feet; thence N01°19'38"E a distance of 517.30 feet to the Southerly right-of-way line of Nebraska Public Power District's irrigation lateral; thence N51°50'38"W on said south line a distance of 77.60 feet; thence N38°52'23"W continuing on said south line a distance of 131.80 feet; thence N31°52'22"W continuing on said south line a distance of 704.00 feet to the easterly right-of-way line of Spring Creek; thence S00°45'03"W on said line a distance of 1238.58 feet to the place of beginning. Said tract contains 10.11 acres, more or less.

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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Logan C. Kinnison

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Anne Stuart Kinnison

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Mary C. Stuart

"Grantor"





STATE OF NEBRASKA    )  
                                          ) ss:  
COUNTY OF HALL        )

The foregoing Deed of Conservation Easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011 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: \_\_\_\_\_

1754-39/315408