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Sally Fox County Clerk
18 page document

After recording return to: Tri-Basin Natural Resources District
1723 Burlington Street
Holdrege, Nebraska 68949

DEED OF CONSERVATION EASEMENT

THIS AGRICULTURAL LAND CONSERVATION EASEMENT (hereinafter "Easement" or "Agricultural Land Easement" or "ALE") on the Protected Property (as defined below) is executed this 21 day of February, 2020 by and between Wetlands America Trust, Inc., a nonprofit corporation, who's address is 1 Waterfowl Way, Memphis, Tennessee 38120 (hereinafter collectively "Landowner"), and the Tri-Basin Natural Resources District having an address of 1723 Burlington Street, Holdrege, Nebraska 68949 (hereinafter "Holder"), and with a right of enforcement to the United States of America (hereinafter "United States") acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (jointly referred to as the "Parties").

The Holder shall have the primary responsibility for management and enforcement of the terms of this Conservation Easement, subject to the rights of the United States.

RECITALS:

- A. **Protected Property:** Landowner is the owner in fee simple of the property legally described in Exhibit A which consists of approximately 157.94 acres located in the Southeast Quarter (SE¼) of Section Seven (7), Township Six (6) North, Range Nineteen (19) West of the 6th P.M., Phelps County, Nebraska (herein "Protected Property").
- B. **Federal Funding:** This Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP) 16 U.S.C. Section 3865 et seq. and

NE-312-1

7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property (the "Purpose of the ALE").

- C. **Non-Federal Funding:** This Easement was acquired in part with grant funds provided by the Nebraska Environmental Trust and will be managed for the purposes set out in grant number 15-208, in accordance with applicable State law. The Protected Property may not be sold, leased, transferred, exchanged, mortgaged, or encumbered in any manner, or used for purposes inconsistent with the grant without prior written notification to the Nebraska Environmental Trust, P.O. Box 94913 – Lincoln, NE 68509-4913.
- D. **Authorizing Statute:** The Holder is a Natural Resources District of the State of Nebraska, organized and existing by virtue of Neb. Rev. Stat. §§2-3201 et seq. (1997) and as such has the qualifications and authority to hold a conservation easement pursuant to the Conservation and Preservation Easements Act. The Holder has among its statutory purposes, as provided in Section 2-3229, R.R.S. 1943, erosion prevention and control, soil conservation, development and management of fish and wildlife habitat, and forestry and range management, and is therefore qualified and has the authority to acquire a conservation easement under the provisions of Section 76-2,112 to 76-2,118, R.R.S. 1943, hereinafter referred to as the "Conservation and Preservation Easements Act".
- E. **Baseline Documentation Report:** Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Holder.
- F. **Easement Intent:** The intent of this Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property (hereinafter "Easement Intent").
- G. **Conservation Values:** Farmland protection, wetland restoration, and wildlife habitat (Recitals H – J) constitute the "Conservation Values" of the Protected Property.
- H. **Farmland Protection:** The Protected Property contains "prime farmland", which may contribute to economic viability through agricultural uses, including crop production, haying, grazing, and livestock production.
- I. **Wetland Restoration:** The wetland restoration through this Easement will contribute to the Rainwater Basin Wetland Complex, which is designated a priority landscape by both the North American Waterfowl Management Plan and Western Hemispheric Shorebird Reserve Network. Wetlands in the Rainwater Basin Wetland Complex provide important wildlife habitat and groundwater recharge to the Ogallala Aquifer.
- J. **Wildlife Habitat:** Rainwater Basin wetlands provide important habitat for a range of wildlife, particularly for migrating waterfowl and shorebirds.

NOW, THEREFORE, for and in consideration of One Dollar (\$ 1.00), the mutual intentions expressed in the foregoing recitals, the mutual covenants, terms, conditions, and restrictions herein contained and other good and valuable consideration, Landowner voluntarily

grants and conveys to the Holder, and Holder voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by the Conservation and Preservation Easements Act and of the nature and character described in this Easement, exclusively for the purpose of conserving and forever maintaining the Purpose of the ALE and Easement Intent of the Protected Property. Furthermore, Landowner and Holder hereto agree as follows:

ARTICLE I

Grant of Easement

Landowner, for itself, its current and future principals, officers, invitees, beneficiaries, successors, and assigns (collectively "Landowner"), hereby irrevocably grants, transfers, and conveys to Holder, its successors and assigns, this Easement encumbering the Protected Property in perpetuity. This Easement conveyance is a sale from Landowner to the Holder.

ARTICLE II

Covenants Relating to the Protected Property

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this ALE Deed will apply to the Protected Property as a whole.

All activities that are inconsistent with the Purpose of the ALE and Easement Intent are prohibited. Additionally, Landowner covenants and binds the Protected Property in perpetuity, such covenants to run with the Protected Property. The terms and conditions of the ALE Deed run with the land and are binding upon the Landowner and Holder and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them, any and all of whom must comply with all terms and conditions of this ALE Deed, including the following:

- A. Agricultural Land Easement Plan:** The Holder shall prepare an agricultural land easement plan (the "ALE Plan") in consultation with the Landowner and, as needed, NRCS. The Holder agrees to update the ALE Plan, in consultation with the Landowner and, as needed, NRCS, in the event the agricultural uses or ownership of the Protected Property change. A copy of the current ALE Plan is kept on file with the Holder.

The ALE Plan shall describe the farm or ranch management system, describe the natural resource concerns, describe the conservation measures and practices a landowner may employ to address the identified concerns, and promote the long-term viability of the land to meet the Purpose of the ALE.

- B. Limitation on Impervious Surfaces:** Impervious surfaces will not exceed 2 percent of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved

areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Holder by this ALE Deed. For the purposes of this Paragraph B, a gravel surface shall not constitute an impervious surface.

C. Limitations on Nonagricultural Uses: Any activities inconsistent with the Purpose of the ALE are prohibited. The following activities are inconsistent with the Purpose of the ALE and are specifically prohibited, subject to the qualifications stated below:

1. **Subdivision:** Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.
2. **Industrial or Commercial Uses:** Industrial or commercial activities on the Protected Property are prohibited except for the following, and Reserved Rights explicitly listed under Article III:
 - a) Agricultural production and related uses in accordance with the terms and conditions of this ALE Deed;
 - b) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Holder approves in writing as being consistent with the Purpose of the ALE and in accordance with the terms and conditions of this ALE Deed;
 - c) Temporary or seasonal outdoor activities or events that do not harm the Purpose of the ALE; and
 - d) Commercial enterprises related to agriculture including but not limited to agritourism, processing, packaging, and marketing of farm or forest products.
3. **Construction on the Protected Property:** Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under Article II, Paragraph C (2)(b) and Article III, Paragraph A (3), that neither individually nor collectively have an adverse impact on the Purpose of the ALE, may be built on the Protected Property with prior written approval of the Holder.

New roads may be constructed if they are approved in advance by Holder, within impervious surface limits, and are necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Holder, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained, modified, and replaced, and new fences installed

without permission if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of the ALE.

- 4. Granting of Easements for Utilities and Roads:** The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Purpose of the ALE as determined by the Holder in consultation with the Chief of NRCS.
- 5. Surface Alteration:** Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except for the following:
 - a)** Dam construction pursuant to a plan approved by the Holder to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation, in accordance with the wetland restoration plan as documented in the Baseline Documentation Report;
 - b)** Erosion and sediment control pursuant to a plan approved by the Holder;
 - c)** Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Holder as being consistent with the Purpose of the ALE; and
 - d)** Agricultural activities and related conservation activities conducted in accordance with the terms and conditions of this ALE Deed and the agricultural land easement plan as described in Article II, Paragraph A.
- 6. Surface and Subsurface Mineral Exploration and Extraction:** Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of this ALE Deed or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited except as otherwise provided in this Article II, Paragraph C (6). Soil removal is allowed for the purpose of wetland restoration, in accordance with the wetland restoration plan as documented in the Baseline Documentation Report. If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this ALE Deed is executed, and their interests have not been subordinated to this Easement, the Landowner must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph C (6). Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this ALE Deed and must incorporate by reference

this ALE Deed.

D. Other Conditions and Restrictions: The following added conditions and restrictions apply to the use and enjoyment of the Protected Property:

- 1. Wetlands:** Draining or otherwise degrading wetlands or the hydrology of wetlands delineated on the Protected Property by any means is prohibited, including but not limited to (1) deep ripping, (2) excavating pits or constructing ditches, (3) pumping, (4) tile draining, (5) causing or permitting of any part or portion of said delineated wetland areas to be filled with earth or any other material, (6) causing or permitting the leveling of any part or portion of said delineated wetland areas on the Protected Property. This includes lakes, ponds, marshes, sloughs, swales, swamps, potholes, and other wholly or partially water-covered areas, now existing or subject to recurrence through natural or man-made causes; provided, always, that the lands covered by this conveyance shall include any enlargements of said wetland areas resulting from normal or abnormal increased water. Wetlands and waters of the U.S. are determined by the U.S. Army Corps of Engineers 1987 Delineation Manual.
- 2. Vegetation Harvest:** Harvesting vegetation for hay production, mowing, or mechanical seed harvesting is prohibited during certain nesting seasons for birds whose populations are in significant decline as identified in the ALE Plan.
- 3. Development:** Erecting, constructing, or placing any structures, buildings, or improvements, other than those outlined in Article II, Paragraph C (3), on the Protected Property is prohibited including, but not limited to, trailers, mobile homes, houses, temporary living quarters, communication towers, golf courses, and other structures.
- 4. Commercial Wind and Solar Power Generation:** The construction of commercial wind and solar energy generation facilities is prohibited anywhere on the Protected Property, except in conformance with the requirements in Article III, Paragraph A (3).
- 5. Animal Feeding Operations:** The establishment and maintenance of animal feeding operations as defined in Chapter 40 of U.S. Code of Federal Regulations 122.23(b)(1) is prohibited. Prohibited animal feeding operations include all those that would be regulated or require permitting as a confined or concentrated animal feeding operation pursuant to U.S. Code of Federal Regulations at 40 CFR 122.23 or 40 CFR 123.25, as amended and the regulations thereunder, or pursuant to the Nebraska Administrative Code at Title 130, as amended and the regulations thereunder.
- 6. Water Rights:** There shall be no transfer, sale, lease, or other separation of water rights from the Protected Property.
- 7. Noxious and Detrimental Species:** The Landowner will not knowingly introduce into the Protected Property any plant species designated as noxious or detrimental

to wildlife by local, state, federal, or wildlife agencies, including but not limited to reed canarygrass and trees.

8. **Dumping and Deposit of Hazardous Waste:** No trash, debris, and other non-compostable refuse may be dumped or otherwise disposed of on the Protected Property, except livestock manure associated with normal agricultural activities, and permitted by applicable state and federal laws. If the Landowner becomes aware of any accidental, illegal, or other placement or spilling of hazardous substances or waste or toxic materials, including oil and petroleum products, on the Protected Property, the Landowner shall notify the Holder on a timely basis and shall comply with the requirements in Article IV, Paragraph C below.

ARTICLE III

Landowner Reserved Rights

Except as expressly limited by this ALE Deed, Landowner reserves for itself, its heirs, devisees, successors, assigns, invitees, licensees, tenants, and guests all rights of an owner of the Protected Property, including the right to use it for all purposes consistent with this Easement. Permitted uses of the Protected Property include but are not limited to the following activities, subject to the qualifications stated below:

- A. **Preserving Agricultural Uses:** The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, other than those identified in Article II, Paragraph D (5), so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the Purpose of the ALE. No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the ALE's protection for the Purpose of the ALE. Allowed uses of the Protected Property include the specific uses allowed in Article II, Paragraph C (2) (a-d) and the following activities, subject to the qualifications stated below:

1. **Agricultural Production:** The production, processing, and marketing of agricultural crops and livestock are allowed provided these activities are conducted in a manner consistent with the terms of the ALE Deed and the agricultural land easement plan described in Article II, Paragraph A.

Farming the Protected Property at any time of the year, except timing instances specified in Article III, Paragraph A (4), in accordance with the provisions of the ALE Plan is allowed. Irrigation of crops may continue to the extent of the Holder's certified irrigated acres on the Protected Property; provided, however, that Landowner and the Protected Property must at all times be in compliance with the rules and regulations of the Holder.

2. **Forest Management and Timber Harvest:** Forest management and timber harvesting are allowed, provided these activities are carried out, to the extent

practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property.

3. **On-Farm Energy Production:** Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits and consistent with the Purpose of the ALE.
4. **Grassland Uses of the Protected Property:** Landowner is allowed to graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions of this ALE Deed and the Purpose of the ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Landowner must not hay, mow, or mechanically harvest for seed during certain nesting seasons for birds whose populations are in significant decline. Determinations of birds whose populations are in significant decline, nesting seasons for such birds, and the areas of the Protected Property affected by this restriction will be set forth within the ALE Plan described in Article II, Paragraph A. Hand harvest for seed is allowed any time of year.

B. Other Allowed Uses: Other uses may be allowed if they are not otherwise prohibited by the ALE Deed, do not harm the agricultural uses, future viability, and related Conservation Values of the Protected Property, and are consistent with the purposes of this Easement and the ALE Plan, including but not limited to the following:

1. **Construction:** Landowner has the right to build, maintain, repair, or replace structures necessary for agricultural production such as wells, pivot points, access roads to structures, loafing sheds, corrals, water lines, water tanks, and other minor agricultural structures and improvements without foundations anywhere on the upland of the Protected Property, subject to the limitations in Article II, Paragraph B and Article II, Paragraph C (3), provided however, that any such structures shall be located where they would cause the least possible disturbance. Any utility corridor and/or roadway must follow the least damaging feasible route with regard to or within the Protected Property. Written approval from Holder is required prior to the commencement of any new construction. Maintenance and repair of existing structures is allowed without approval from Holder.
2. **Water Resources:** In accordance with applicable laws and regulations, and subject to the restrictions in Article II, Paragraphs D (1), (3), and (6), the Landowner may maintain, enhance, and develop any new or existing water resources which may include but are not limited to wells, windmills, buried water pipelines, irrigation, and stock tanks on the Protected Property for permitted agricultural activities, domestic needs, fish and wildlife uses, and private recreation.

3. **Hunting Blinds:** Hunting and/or wildlife viewing blinds that neither individually nor collectively have an adverse impact on the Purpose of the ALE may be constructed anywhere on the Protected Property with prior written approval of the Holder, subject to the limitations in Article II, Paragraph B. Any blind that requires excavation in the wetland must be done in consultation with the Holder so the excavation is not deeper than the wetland's clay layer.
4. **Restoration of Cropland to Grassland and/or Wetland:** Cropland may be restored to grassland and/or wetland for livestock grazing, hay production, and/or wildlife habitat provided high quality, weed-free seed is used consisting of native grass and forbs appropriate for the region.
5. **Residual Rights:** All other uses compatible with the Easement Intent and Purpose of the ALE and not prohibited by this ALE Deed are allowed.

ARTICLE IV

Protection of United States's Interests

- A. United States Right of Enforcement:** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE Deed are not enforced by the Holder. The Secretary of the United States Department of Agriculture (the "Secretary") or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Holder, or its successors or assigns, fails to enforce any of the terms of this ALE Deed, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this ALE Deed from the Landowner, including, but not limited to, attorney's fees and expenses related to Landowner's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this ALE Deed from the Holder, including, but not limited to, attorney's fees and expenses related to Holder's violations or failure to enforce the ALE Deed against the Landowner, up to the amount of the United States's contribution to the purchase of the Easement.

The Holder will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Holder and Landowner are in compliance with the ALE Deed. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE Deed and the United States ALE Agreement with the Holder, the United States will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the United States shall provide advance notice to Holder and Landowner and provide Holder and Landowner a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of the ALE Deed and will give notice to Holder and Landowner at the earliest practicable time.

- B. General Disclaimer and Landowner Warranty:** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Holder's or Landowner's negligent acts or omissions or Holder's or Landowner's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below) including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Landowner must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Landowner's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws (defined below).

- C. Environmental Warranty:** As used herein, "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

As used herein, "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

Landowner warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged

noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Landowner further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Landowner warrants the information disclosed to Holder and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Landowner hereby promises to hold harmless and indemnify Holder and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Landowner or any other prior owner of the Protected Property. Landowner's indemnification obligation will not be affected by any authorizations provided by Holder or the United States to Landowner with respect to the Protected Property or any restoration activities carried out by Holder on the Protected Property; provided, however, that Holder will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Holder.

- D. Extinguishment, Termination and Condemnation:** The interests and rights under this ALE Deed may only be extinguished or terminated with written approval of the Holder and the United States and in accordance with Sec. 76-2,113 of the Conservation and Preservation Easements Act, or as authorized by any other provision of law in effect at the time such release is requested. Due to the Federal interest in this ALE, any proposed extinguishment, termination, or condemnation action that may affect the United States's interest in the Protected Property must be reviewed and approved by the United States.

With respect to a proposed extinguishment, termination, or condemnation action, the Holder and the United States stipulate that the fair market value of the ALE is 26.39 percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Landowner must reimburse Holder and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Holder and the United States.

The allocation of the Proportionate Share between the Holder and the United States will be as follows: (a) to the Holder or its designee, 50 percent of the Proportionate Share; and (b) to the United States 50 percent of the Proportionate Share. Until such time as the Holder and the United States receive the Proportionate Share from the Landowner or the

Landowner's successor or assign, the Holder and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Holder, the Holder must reimburse the United States for the amount of the Proportionate Share due to the United States.

- E. Amendment:** This ALE Deed may be amended only if, in the sole and exclusive judgment of the Holder and United States, by and through the Chief of NRCS, such amendment is consistent with the Purpose of the ALE and complies with all applicable laws and regulations. The Holder must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE Deed, such amendments must be mutually agreed upon by the Holder, Landowner, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

ARTICLE V

General Provisions

- A. Wetland Restoration:** The Protected Property may be subject to periodic flooding from activities associated with a wetland restoration on the Protected Property. The purpose of said wetland restoration project is to provide habitat and food for a varied array of aquatic, terrestrial, and avian wildlife, particularly waterfowl and threatened and endangered species. The Landowner agrees to allow and cooperate with the proposed wetland restoration project on the Protected Property. The Holder retains the right to maintain the wetland to the extent of the initial restoration. A copy of the initial restoration plans is maintained in the Baseline Documentation Report.
- B. Vegetation Management:** The Holder and its designated agents may manage vegetation in areas that are not cropped for the benefit of wildlife habitat.
- C. Holder Access:** The Holder and its designated agents will have reasonable access to the Protected Property with advance notice to Landowner or Landowner's representative.
- D. Enforcement:** The Holder may enforce this Easement in law or in equity against Landowner, its officers, principals, successors, assigns, licensees, tenants, and permittees. If there is a violation of any of the provisions of this Easement, the Holder shall have the right to notify the Landowner, which shall promptly cure the violation by the following:
1. Ceasing the violation; or
 2. Restoring the Protected Property to its condition before the violation; or
 3. Both, as the case may be.

If the violation continues, the Holder shall have the right, but not the obligation (except to the extent that Article IV, Paragraph A is applicable), to pursue legal actions or proceedings at law or in equity to cause such violation to be cured. Landowner shall reimburse the Holder for all expenses incurred, including legal fees whether in or out of court and all other related or incidental costs of proceedings, legal or otherwise, brought to cure an alleged violation of this Easement or to collect such reimbursement. Failure to enforce any restriction or covenant herein contained shall in no way be deemed a waiver of a right to do so thereafter as to the same violation or breach or as one occurring prior or subsequent thereto. The Holder shall resolve violations within 60 days of their discovery in accordance with 7 CFR 1491.30. Failure to cure the violation may result in enforcement of the terms of the Conservation Easement by the United States.

Notwithstanding anything herein to the contrary, Landowner agrees and acknowledges that it has no legal right or claim whatsoever arising against Holder in the event that Holder in the future does not enforce any restriction in the Easement or elects to become released from the Easement.

- E. Title Warranty:** Landowner warrants that it has good title to the Protected Property, that the Landowner has the right to convey this Easement, and that the Protected Property is free and clear of any encumbrances.
- F. Responsibilities of Landowner and Holder Not Affected:** Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Holder, or in any way to affect any existing obligation of Landowner as owner of the Protected Property. Among other things, this shall apply to the following:
- 1. Taxes:** Landowner shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property. If Holder is ever required to pay any taxes or assessments on its interest in the Protected Property, Landowner will reimburse Holder for the same.
 - 2. Upkeep and Maintenance:** Landowner shall continue to be solely responsible for the upkeep and maintenance of the Protected Property, to the extent it may be required by law. Holder shall have no obligation for the upkeep or maintenance of the Protected Property, although retains the right to do so at its discretion.
 - 3. Liability and Indemnification:** Landowner shall indemnify and hold harmless Holder, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Holder may be subject or incur relating to the Protected Property, which may arise from, but is not limited to, Landowner's negligent acts or omissions or Landowner's breach of any representation, warranty, covenant, agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

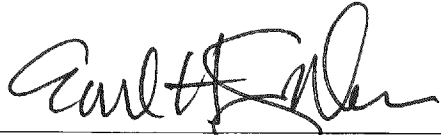
- 4. Recording/Fees:** Promptly following its execution by Landowner and Holder, Landowner shall record the Easement with the Phelps County Register of Deeds and pay any fees associated with such recording. Notwithstanding the foregoing, the Holder is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, the Landowner appoints the Holder as Landowner's attorney-in-fact to execute, acknowledge, and deliver any necessary instrument on Landowner's behalf. Without limiting the foregoing, the Landowner agrees to execute any such instruments upon request.
- G. Monitoring:** It is the obligation of both Landowner and Holder to monitor the Protected Property so as to keep all agricultural lands, grasslands, wetlands, and other natural conditions in the state and condition as they exist at the date hereof or post restoration, as appropriate, and in accordance with the Baseline Documentation Report, subject to the terms and conditions specifically permitted herein.
- H. Perpetuity of Easement:** The covenants, terms, conditions, restrictions, and purposes imposed with this grant shall bind the Parties, their agents, personal representatives, heirs, assigns, and all other successors to them in interest and shall run with the land and continue in perpetuity as servitude upon the Protected Property.
- I. Partial Invalidity:** Invalidation of any provision of this ALE Deed, by court judgment, order, statute, or otherwise, shall not affect any other provision which shall remain in force and effect.
- J. Notice of Condemnation:** In the event all or any part of the Protected Property is ever proposed for condemnation by the State or local government, the Holder and NRCS must be notified immediately, and the consent of the United States obtained, before the action may proceed. Any approved condemnation may only proceed pursuant to the terms of Article IV, Paragraph D.
- K. Property Transfer:** Landowner agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Landowner further agrees to give written notice to the Holder, including the name and address of the transferee(s), of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. Holder may notify such transferee(s) directly regarding the terms of this Easement. The failure of Landowner or Holder to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.
- L. Subordination:** Any future mortgage, easement, lien, or other cloud on the Protected Property's title shall be subordinated to the terms of this Easement.
- M. Acts of Nature:** Unless otherwise specified, nothing in this Easement shall require Landowner to take any action to restore the condition of the Protected Property after any fire or other Act of Nature. Landowner understands and agrees that nothing in this

Easement relieves it of any obligation or restriction on the use of the Protected Property imposed by law.

- N. Entire Agreement:** This document sets forth the entire agreement of the Landowner and the Holder with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement. If any provision is found to be invalid, the remainder of the provisions of this Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- O. “Landowner” and “Holder”:** The term “Landowner,” as used in this ALE Deed, and any pronouns used in place thereof shall mean and include the above-named Landowner, and its principals, officers, registered agent, representatives, successors, and assigns. The term “Holder,” as used in this ALE Deed, and any pronouns used in place thereof shall mean the Tri-Basin Natural Resources District, and its successors and assigns.
- P. Titles:** Article, Section, and Paragraph titles and subtitles are for convenience only and shall not be deemed to have legal effect.
- Q. Costs, Liabilities, and Insurance:** Landowner assumes all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, and shall maintain adequate comprehensive general liability insurance coverage that includes any and all commercial hunting operations, and/or other recreational activities. Holder’s name shall be listed among the insured parties on the policy. Landowner shall keep the Holder’s interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Landowner.
- R. Effective Date:** This Easement shall be effective when signed by the Landowner and Holder and recorded in Phelps County.

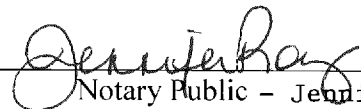
TO HAVE AND TO HOLD the above described Agricultural Land Easement unto the Tri-Basin Natural Resources District, the United States of America, and their successors and assigns forever.

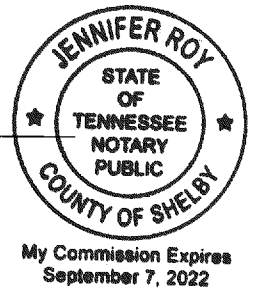
IN WITNESS WHEREOF, the Landowner and the Holder have executed this Agricultural Land Easement on the date and year first herein set forth.

By:  2/21/2020
Owner(s) - Wetlands America Trust, Inc. Date
By: Earl H. Grochau

Tennessee
STATE OF ~~NEBRASKA~~)
) ss.
COUNTY OF Shelby)

The foregoing instrument was acknowledged before me on this 21 day of February, 2020 by Earl H. Grochau.


Notary Public - Jennifer Roy



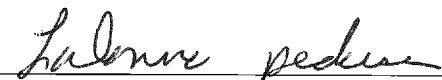
ACCEPTANCE

This Agricultural Land Easement is hereby accepted by THE TRI-BASIN NATURAL RESOURCES DISTRICT, Holder herein.

By:  2/14/20
John Thorburn, General Manager Date

STATE OF NEBRASKA)
) ss.
COUNTY OF Hall)

The foregoing instrument was acknowledged before me on this 14th day of February, 2020, by John Thorburn, General Manager of the Tri-Basin Natural Resources District.


Notary Public - LaDonna Pedersen

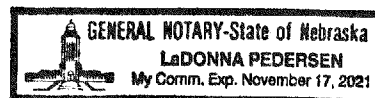


EXHIBIT "A" (Page 1 of 2)

Legal Description and Plat Map of the Protected Property

Ingress and Egress to the Protected Property is provided from 736 Road, which borders the south side of the property and is labeled on the below plat map.

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE SOUTHEAST 1/4 OF SECTION 7, TOWNSHIP 6 NORTH, RANGE 19 WEST OF THE 6TH P.M., PHELPS COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTHEAST 1/4 (SOUTH 1/4 CORNER) THENCE N00°34'05"W (ASSUMED BEARING ON THE WEST LINE OF SAID SOUTHEAST 1/4 A DISTANCE OF 2653.26 FEET TO THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4 (CENTER 1/4 CORNER), THENCE N89°42'22"E ON THE NORTH LINE OF SAID SOUTHEAST 1/4 A DISTANCE OF 2599.34 FEET TO THE WEST LINE OF DEED BOOK 42, PAGE 19, THENCE S00°29'00"E ON SAID WEST LINE AND ALSO BEING PARALLEL WITH AND 43.00 FEET WEST OF THE EAST LINE OF SAID SOUTHEAST 1/4 A DISTANCE OF 2644.35 FEET TO THE SOUTH LINE OF SAID SOUTHEAST 1/4. THENCE S89°30'35"W ON SAID SOUTH LINE A DISTANCE OF 2595.40 FEET TO THE POINT OF BEGINNING, CONTAINING 157.94 ACRES MORE OR LESS, OF WHICH 1.97 ACRES IS CURRENTLY BEING OCCUPIED AS PUBLIC ROAD RIGHT OF WAY.

DUCKS UNLIMITED ALE EASEMENT SURVEY PROJECT NO. NE-398-1

NW 1/4 SEC. 7-T6N-R19W

NE 1/4 SEC. 7-T6N-R19W

WEST 1/4 COR.
SEC. 7-T6N-R19W

N89°42'22"E 2575.01'

N00°34'05"W 2657.81'

N89°42'22"E 2642.34'

40 50304802N
59 52180396E

CENTER 1/4 COR.
SEC. 7-T6N-R19W

N89°42'22"E 2593.34'

40 50304802N
59 52180396E

LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE SOUTHEAST 1/4 OF SECTION 7, TOWNSHIP 6 NORTH, RANGE 19 WEST
COUNTY OF NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 1/4 (SOUTH 1/4 CORNER) THENCE N89°42'22"E
N00°34'05"W (ASSUMED BEARING ON THE WEST LINE OF SAID SOUTHEAST 1/4 CORNER) A DISTANCE OF 2653.26
FEET TO THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4 CORNER. THENCE N89°42'22"E
N00°34'05"W A DISTANCE OF 2593.34 FEET TO THE WEST LINE OF DEED
43.00 FEET LONG THEREUPON TO THE SOUTHWEST CORNER OF SAID SOUTHEAST 1/4 CORNER. THENCE S89°42'22"E
A DISTANCE OF 2593.34 FEET TO THE POINT OF BEGINNING. CONTAINING 157.94 ACRES MORE OR LESS, OF WHICH 1.97 ACRES IS
CURRENTLY BEING OCCUPIED AS PUBLIC ROAD RIGHT-OF-WAY.

CORNER TIES:

SOUTHEAST CORNER SEC. 7-T6N-R19W
FOUND SURVEY MARKER IN ASPHALT
NM 54.20' SET 5/8" REBAR WITH LS-783 CAP
NM 54.13' SET 5/8" NAIL-BOTTLE CAP IN P.P.
SE 47.81' FO. NAIL-BOTTLE CAP P.P.
SW 48.53' FO. NAIL-BOTTLE CAP LONE FEN. POST
SOUTH 1/4 CORNER SEC. 7-T6N-R19W
FOUND 1/4 CORNER SEC. 7-T6N-R19W
N. 33.00' SET 5/8" REBAR WITH LS-783 CAP
NE 66.54' SET NAIL-BOTTLE CAP P.P.
SE 64.58' SET 5/8" REBAR
CENTER 1/4 CORNER SEC. 7-T6N-R19W
SET 5/8"X30" REBAR WITH BLUE LS-783 CAP
N. 20.50' BOLT WEST SIDE CONC. HEADWALL
SE 10.67' TOP LONE T-POST
NO OTHER TIES AVAILABLE
EAST 1/4 CORNER SEC. 7-T6N-R19W
FOUND SURVEY MARKER IN ASPHALT
NM 43.00' SET 5/8" REBAR WITH LS-783 CAP
NM 43.66' FO. NAIL-BOTTLE CAP IN P.P.
NE 57.16' FO. NAIL-BOTTLE CAP IN P.P.
WEST 1/4 CORNER SEC. 7-T6N-R19W FOUND 3/4" PIPE
WITH WOOD PIECES OF WOODEN STAKE 0.8" DEEP
NM 30.16' DIAPHR. TOP CENTER S. END C. M. P.
SE 34.20' SET NAIL-BOTTLE CAP IN P.P. LONE POST
NORTH 1/4 CORNER SEC. 7-T6N-R19W
FOUND 1/4 CORNER SEC. 7-T6N-R19W
N. 37.46' SET NAIL-BOTTLE CAP TOP C.F. P.
NW 84.40' SET NAIL-BOTTLE CAP IN P.P.

Nebraska
Survey Record Repository
RECORDED
FEB 11 2020
1456-125

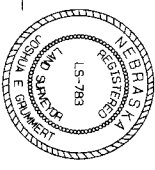
LEGEND:

- FOUND CORNER
- OCULATED POINT
- SET 5/8" X 30" REBAR
- SET 5/8" NAIL-BOTTLE CAP
- UNLESS NOTED OTHERWISE
- D-DEED DISTANCE
- M-MEASURED DISTANCE
- R-RECORDED DISTANCE
- P-PLATTED DISTANCE



I, JOSHUA EUGENE GRUMMETT, A
LICENSED PROFESSIONAL LAND
SURVEYOR UNDER THE LAND
SURVEYING ACT OF NEBRASKA, DO
HEREBY CERTIFY THIS PLAT OF
A SURVEY WAS MADE BY ME OR
UNDER MY SUPERVISION, THIS
28TH DAY OF JUNE, 2019.

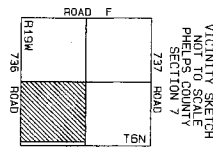
JOSHUA E. GRUMMETT LS-783



GRUMMETT PROFESSIONAL SERVICES, LLC

2837 W. HWY 6, STE # 206, HASTINGS NE, 68901
PHONE 402-879-5701 EMAIL: jgrummett@chcoo.com
WEBSITE: www.grummettsurveying.com

6 P.S. PROJECT # 049-2019



SW 1/4 SEC. 7-T6N-R19W

N00°34'05"W 2653.26'

PT SE 1/4 SEC. 7-T6N-R19W
157.94 ACRES

1.97 ACRES
PUBLIC ROAD
RIGHT-OF-WAY

SOUTH 1/4 COR.
SEC. 7-T6N-R19W

40 49576641N
99 52151486W

736 ROAD

S89°30'35"W 2638.40' M 2638.37' R DEBUSK 2016

NE 1/4 SEC. 18-T6N-R19W

WEST LINE DEED
BOOK 42, PAGE 19

40 49582761N
99 51218421W

SOUTHEAST CORNER
SEC. 7-T6N-R19W

ROAD G

S00°29'00"E 2644.21' M 2643.63' R BIRQUIST 1937

SW 1/4 SEC. 8-T6N-R20W

EAST 1/4 COR.
SEC. 7-T6N-R19W

NW 1/4 SEC. 8-T6N-R19W