NOTICE: This Conservation Easement is being conveyed subject to requirements of a grant from the U.S. Fish and Wildlife Service-Division of Bird Habitat Conservation, 1849 C Street, NW, Washington, DC 20240, through the North America Wetlands Conservation Act, through a proposal named Platte River Confluence III, submitted on March 5, 2010, approved by the Migratory Bird Conservation Council on September 15, 2010. A grant, Agreement Number ND-N361B, was awarded to Ducks Unlimited, Inc., on December 10, 2010. Copies of the grant proposal and grant agreement are kept at the offices of the U.S. Fish and Wildlife Service, Division of Bird Habitat Conservation, 1849 C Street, NW, Washington, DC 20240 and at the office of Ducks Unlimited, Inc., at 2525 River Road, Bismarck, North Dakota, 58503. This conservation easement was created to protect valuable wetlands and waterfowl habitat and contains restrictions on the use and development of the property that are intended to protect its conservation values.

NOTICE: The property encumbered by this Conservation Easement was acquired in part with grant funds (Grant Number NET 09-126) provided by the Nebraska Environmental Trust and will be managed for the purposes set out in the grant, in accordance with applicable State law. This property may not be sold, leased, transferred, exchanged, mortgaged or encumbered in any
manner, or used for purposes inconsistent with the grant without the prior written approval of the Nebraska Environmental Trust, P.O. Box 94913, Lincoln, NE 68509-4913.

THIS GRANT DEED OF CONSERVATION EASEMENT (this “Easement”) is made as of this _____ day of ______________________, 2015, by ___________________________ with an address of ___________________________ (together with its successors and assigns hereinafter collectively referred to as the “Grantor”), and WETLANDS AMERICA TRUST, INC., a non-profit corporation organized under the laws of the District of Columbia, One Waterfowl Way, Memphis, Tennessee 38120, hereinafter referred to as the “Grantee”;

WHEREAS, Grantor is the owner in fee simple of approximately 276 acres, more or less, of real property located in Scotts Bluff County, Nebraska, and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, and the water rights and water resources located on, appurtenant or belonging to, or beneficially used on the Land (collectively, the “Water Rights”) which are more particularly described in Exhibit B attached hereto (the Land and the Water Rights together referred to in this Easement as the “Protected Property”); and

WHEREAS, the Protected Property consists of natural areas of significant ecological, scenic, and aesthetic value, and has substantial value and potential as open space, and a natural, ecological, and scientific resource; and,

WHEREAS, open space conservation easements serve to protect the scenic, natural, and open space values of properties in a manner that permits continuing private ownership of land while fulfilling public conservation purposes and the public may enjoy scenic views of and across the Protected Property; and

WHEREAS, the Grantee is a non-profit, 501 (c) (3) “qualified conservation organization” as defined in Section 170 (h) of the Internal Revenue Code of 1986, as amended and the regulations thereunder (collectively, the “Code”), whose purpose is to preserve, enhance, and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Uniform Conservation Easement Act of 1981 as well as the laws of the State of Nebraska, and in particular Nebraska Revised Statutes Section 76-2, 111 et seq., permit the creation of conservation easements for the purposes of, among other things, retaining or
protecting natural, scenic, historical or open space values of real property, assuring its availability for agricultural, forest, recreational, educational or open space use, protecting natural features and resources, maintaining or enhancing air and water quality or preserving the natural, historical, architectural, archeological or cultural aspects of real property;

WHEREAS, Grantor and Grantee recognize the natural, scenic, aesthetic, and special character and opportunity for enhancement of the Protected Property, and have the common purpose of the conservation and protection in perpetuity of the Protected Property as “a relatively natural habitat of fish, wildlife or plants or similar ecosystem,” as that phrase is used in 26 USC 170 (h) (4) (A) (ii) and Section 170 (h) (4) (A) (ii) of the Code, by placing voluntary restrictions upon the use of the Protected Property and by providing for the transfer from the Grantor to the Grantee of affirmative rights for the protection of the Protected Property; and so as to qualify as a contribution of a “qualified conservation contribution” as that term is defined under Section 170 (h) (2) (C) of the Code.

WHEREAS, by limiting development and use of the Protected Property, protection of the Protected Property will preserve open space pursuant to clearly delineated Federal, State and local government policies and will yield a significant public benefit, and will thereby meet the requirements of Section 170(h)(4)(iii)(II) of the Code; and

WHEREAS, limiting development of the Protected Property will preserve the Protected Property for the scenic enjoyment of the general public, and will yield a significant public benefit, and will thereby meet the requirements of Section 170(h)4(iii)(I) of the Code; and

WHEREAS, this Easement will accomplish a number of the factors determining “significant public benefit” under Treas. Reg. Section 1.170A-14(d)(4)(iv); and

WHEREAS, Grantee’s purpose is to preserve, enhance, and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Grantee has the resources to monitor and enforce the restrictions set forth in this Easement; and

WHEREAS, the North Platte River Landscape provides critical habitat for waterfowl and other migratory birds in the Central Flyway of North America by providing resting and feeding areas for birds during migration and wintering periods, often supporting several million birds during peak migration periods, including significant percentages of North American populations of mallards, white-fronted geese, northern pintails and sandhill cranes, and
WHEREAS, the North Platte River has been designated as one of the most important waterfowl habitats in the Central Flyway of North America, providing a critical link between southern wintering habitats and northern breeding habitats, and

WHEREAS, the Protected Property lies within the “North Platte River”, identified as a Biologically Unique Landscape by the Nebraska Game and Parks Commission as part of the Nebraska Natural Legacy Project, and contains important habitat for rare, unique, and at-risk species, and

WHEREAS, the Protected Property consists of relatively natural areas of significant natural habitat and has substantial value as open space, both for scenic enjoyment and to further a government policy (referred to as the “Conservation Values”), the preservation of which shall provide a significant public benefit. These Conservation Values are identified in the Baseline Documentation Report (the “Report”) and outlined further as follows:

1. Significant Wildlife Habitat. The Protected Property qualifies as significant wildlife habitat because it is in a relatively natural state and it contributes to the Platte River Focus Area, described by Ducks Unlimited as an area of continental importance to waterfowl and other migratory birds. The Platte River provides migration habitat to several million waterfowl each year, primarily during spring migration. The Platte River floodplain habitats have been severely impacted by watershed alteration, wetland drainage and development pressure. It is imperative that remaining, functional habitats along the Platte River be enhanced and protected in order to meet the needs of migratory waterfowl and other migratory birds.

   i. Relatively natural state. The Protected Property is in a relatively natural state containing approximately two hundred seventy-six (276) acres of undeveloped land and other features as indicated in the Report.

   ii. Habitat.

      (a) The Protected Property contains unique and significant conservation values that are important for many species of migrating and wintering waterfowl as well as other wildlife in the form of nearly two hundred seventy-six acres (276) of wetlands, riparian habitat, grasslands, and croplands within and adjacent to the floodplain of the Platte River (hereinafter, the “Waterfowl Use Areas”); Grantor and Grantee both acknowledge and recognize the importance of protecting and managing
these resources and that the primary objective of this Easement is to manage and preserve the Protected Property so as to maintain or enhance the conservation values of the Waterfowl Use Areas (WUA), as defined in this Easement and corresponding habitat descriptions in the Baseline Documentation Report (Report), in such a manner as to provide considerable benefit to waterfowl populations and associated wetland dependent species of wildlife; and

(b) More than 250 species of migrating waterfowl, wading birds, and neotropical migrant songbirds utilize and are dependent on spring and fall migration habitat within the Platte River Focus Area to successfully complete annual life cycles; and

(c) The Platte River Focus Area serves vital ecological functions such as storage and purification of floodwater; and

(d) The importance of this region was recognized in the North American Waterfowl Management plan and represents one of the priority Waterfowl Conservation Regions in the Ducks Unlimited International Conservation Plan; and

iii. Grantor and Grantee recognize the opportunity to protect and preserve the relatively natural significant habitat that is present on the Protected Property as outlined here and detailed in the Report, and have the common purpose of the conservation and protection in perpetuity of the Protected Property as “a relatively natural habitat of fish, wildlife or plants or similar ecosystem” as that phrase is used in 26 USC 170 (h) (4) (A) (ii) and Section 170 (h) (4) (A) (ii) of the Internal Revenue Code of 1986, as amended (“the Code”), and in regulations promulgated thereunder by placing voluntary restrictions upon the use of the Protected Property and by providing for the transfer from the Grantor to the Grantee of affirmative rights for the protection of the Protected Property; and so as to qualify as a contribution of a “qualified conservation contribution” as that term is defined under Section 170 (h) (2) (C) of the Code.

WHEREAS, the specific Conservation Values of the Protected Property on the date of this Easement are documented in the Baseline Documentation Report, dated ______________________.
a copy of which is on file with both the Grantor and the Grantee and which Report was made available by Grantee to Grantor prior to the date of this Easement. Both parties agree that the Report provides an accurate representation of the Protected Property and the condition of the same as of the date of this Easement, as required by Treasury Reg. 1.170 A-14 (g) (5), and is intended to serve as an objective informational baseline outlining the Conservation Values present on the Protected Property at the time of this Easement, as well as for monitoring compliance with the terms and conditions of this Easement on at least an annual basis. “Conservation Values” are defined as those characteristics of the Protected Property which exemplify “a relatively natural habitat of fish, wildlife, or plants or similar ecosystem,” as that phrase is used in 26 USC 170 (h) (4) (A) (ii) and Section 170 (h) (4) (A) (ii) of the Code, and/or other particular natural resources perpetually protected for the benefit of the public on the Protected Property.

WHEREAS, Grantor represents that the Protected Property is free and clear of any liens or encumbrances that could have a material adverse effect on this Easement and that, as owner of the Protected Property, Grantor has access thereto, the right to convey this Easement to the Grantee, and the right to preserve and protect the Conservation Values of the Protected Property in perpetuity; and

WHEREAS, the County Board of Scotts Bluff County, Nebraska (the “County”) has been asked to approve this Easement in accordance with Nebraska Revised Statutes Section 76-2,112; and the Protected Property lies within an area of the County designated for the above-mentioned conservation, agricultural, forest, or open space land use purposes and conforms in all respects to the land-use planning in effect for the County; and

WHEREAS, this Easement will serve to support various governmental conservation policies including, but not limited to, the clearly delineated governmental policy and objectives outlined in the North American Waterfowl Management Plan and the Nebraska Natural Legacy Plan, and

WHEREAS, the Water Rights have substantial value for agricultural, wildlife habitat, horticultural, wetlands, recreational, forest or other uses consistent with the protection of open land, environmental quality or ecological diversity (the "Permitted Uses") and will be dedicated and restricted to support, enhance and further the Permitted Uses, including but not limited to the continuation of the historic use of the Water Rights on the Property; and
WHEREAS, The Grantor has agreed to convey the Easement to the Grantee as described herein; and

NOW, THEREFORE, the Grantor, in consideration of the foregoing recitations and of the mutual covenants, terms, conditions and restrictions set forth herein and as an absolute and unconditional gift, does hereby freely give, grant, bargain, donate and convey unto the Grantee, and its successors and assigns, the Easement over the Protected Property subject to the covenants, conditions and restrictions hereinafter set forth which will run with the land and burden the Protected Property in perpetuity.

Section I

PURPOSE

Purpose. This Easement is granted for the purpose of forever conserving the open space, agricultural productivity, wildlife habitat, and biological diversity of the Protected Property. The conservation purpose (hereinafter “Purpose”) of this Easement is further defined below:

1. wetlands and waterfowl protection;
2. wildlife habitat protection, and ecological value protection;
3. open space protection;
4. natural communities and biological diversity protection;
5. water quality and riparian values protection including the maintenance of soil quality;
6. to allow compatible outdoor recreational and educational uses;
7. to allow compatible agricultural and farming uses, including ranching and animal husbandry; and
8. the protection of any other characteristics, resources and/or uses of the Protected Property that constitute Conservation Values as shown and defined in the Report.

This Purpose is to ensure that the Protected Property will be retained in perpetuity predominantly in its natural and scenic condition for conservation purposes to benefit the public and to prevent any use of the Protected Property that would significantly impair or interfere with the Conservation Values of the Protected Property, as defined in the Report, while allowing for traditional uses on the Protected Property that are compatible with and not destructive of those Conservation Values.
Section II

GRANTEE’S AFFIRMATIVE RIGHTS

Grantee shall have the right to protect the Conservation Values of the Protected Property and to prevent any activity on, or use of, the Protected Property that is inconsistent with the Purpose of this Easement and to require the restoration to the condition immediately before such activity or use of any areas or features of the Protected Property that may be damaged by any such inconsistent activity or use.

2.1 Right of Entry and Access & Enforcement. The Grantee shall have the right, with prior notice to Grantor, to enter the Protected Property for the purposes of the inspection and protection of the Conservation Values of the Protected Property and to enforce the terms of this Easement. The right of entry and access herein described does not extend to the public or any person or entity other than the Grantee, its agents, employees, successors, and/or assigns, and this Easement does not constitute a dedication to the public. In the event of an emergency and/or any circumstances which may cause immediate harm to the Conservation Values, the Grantee may seek immediate injunctive relief to mitigate such harm.

2.2 Value Used as Match. Grantee reserves the right to use the value of this Easement donation as match for any state, local, or Federal conservation grant. Should it be used for a match for a NAWCA grant, Grantor hereby agrees to be bound by the terms of any NAWCA grant as it relates to the Protected Property, provided that such terms are not inconsistent with the terms of this Easement.

2.3 Management Plan. Grantee shall have the right, at its discretion, to develop a management plan consistent with the terms of this Easement for rare or endangered plant or animal species in the event that they are found to exist on the Protected Property and to implement said plan with the prior written consent of the Grantor, which consent shall not be unreasonably withheld or delayed. Costs for such a plan shall be paid by Grantee and such plan shall not impinge on or affect the rights reserved by Grantor hereunder unless Grantor expressly consents to the same in writing.

2.4 Water Rights Protection. In the event of the Grantor’s inaction or other failure to protect the Water Rights listed in Exhibit B, the Grantee may take such actions in accordance
with Nebraska law to protect the Water Rights from being lost, including but not limited to payment of any delinquent assessments, legal action, or administrative procedures.

Section III

**RESERVED RIGHTS AND RESTRICTIONS**

Notwithstanding any provision to the contrary contained in this Easement, the Grantor reserves for itself and its heirs, successors and assigns all rights with respect to the Protected Property except as provided herein, including without limitation, the right of exclusive use, possession and enjoyment of the Protected Property, and the right to sell, mortgage or otherwise encumber the Protected Property, subject to the restrictions and covenants set forth in this Conservation Easement. The exercise of all reserved rights will be in full accordance with all applicable local, state and federal laws and regulations, as well as in accordance with the Purpose of this Easement.

3.1 **Uses.** There shall be no commercial or industrial activity undertaken or allowed on the Protected Property; no residential development; no agricultural activities that are incompatible with the Purpose; nor shall any rights of passage, rights of way, or easements across or upon the Protected Property be allowed or granted to third parties for an incompatible use. Grantor and Grantee acknowledge and agree that the existing agricultural activities, as generally described in the Report, are compatible with the Purpose of this Easement and shall be permitted by this Easement as a right reserved by Grantor herein in the same locations that those activities are currently being undertaken, as generally described in the Report.

3.2 **Subdivision.** Except as expressly provided herein, the Protected Property shall remain a single undivided tract of land under unified ownership, which may be joint or undivided. Unless specifically permitted by the terms of this Easement, the Protected Property may not be subdivided, partitioned, or otherwise divided from the whole for residential development notwithstanding that the Protected Property may have been acquired in separate parcels or lots or may be subject to an approved subdivision; for sale or transfer in multiple undeveloped parcels; or for any purpose that would create lots, parcels, or *de facto* parcels in separate ownership including horizontal property regimes.
Exceptions to Subdivision Prohibition:  The Grantor may enter into boundary line agreements that result in conveyances of parcels smaller than the whole to resolve bona fide boundary disputes, so long as such conveyances are:

(a) For legally necessary purposes;
(b) Accomplished via deed and recorded pursuant to State conveyancing regulations;
(c) Given prior, written consent by the Grantee, which shall not be unreasonably withheld, provided that any conveyances have a *de minimis* effect on the total acreage of land protected under this Conservation Easement;
(d) Subject to the terms and conditions of this Conservation Easement including, but not limited to, provisions restricting conveyed parcels from development and the building of structures on the conveyed parcels; AND
(e) Consistent with the Conservation Purposes of this Conservation Easement and will not negatively affect the Conservation Values of this Conservation Easement and will have a *de minimis* effect on the Grantee’s annual monitoring and stewardship responsibilities outlined in Section 2.1 above.

In addition, any portion of the Protected Property may be conveyed to an entity that meets the qualification set forth in Section 4.10, for permanent conservation ownership by such a qualified entity, so long as said transfer meets the requirements of Section 3.2(a) – (e) above.

3.3 Structures and Buildings. The Protected Property contains the following existing structures: one (1) pit blind and two (2) grain silos. These existing structures are more fully identified in the Report. There shall be no construction or placing of buildings, docks, bridges, or other structures or buildings including, but not limited to, transmission or receiving towers, energy facilities, or water tanks on the Protected Property except as provided herein. There will be no mobile homes, house trailers, temporary shelter or vehicles of any sort providing permanent living quarters on the Protected Property, except as expressly provided herein. The Grantor reserves the following rights related to structures:

(a) The right to construct, maintain, repair, and replace Agricultural Structures, including the two (2) existing grain silos, that may be reasonably necessary in connection with commercial agricultural activities. Agricultural Structures shall
not be used for human habitation. All Agricultural Structures, including the two (2) existing grain silos, shall be located within a Building Envelope that shall not exceed two (2) acres in size. Only one (1) building envelope shall be allowed on the entirety of the Protected Property. Prior to the construction of any Agricultural Structures, the Grantor shall provide notice to the Grantee pursuant to Section 4.7 of this Easement as to the location of the Building Envelope and shall obtain Grantee’s approval, which shall not be unreasonably withheld. Once the Building Envelope is established, Grantee’s approval of the construction of any Agricultural Structures is not required.

(b) The right to maintain, repair and replace existing structures, if any (including those referenced or described in the Report and those permitted under Section 3.11).

c) The right to construct, maintain, repair, replace and relocate duck blinds, deer and turkey stands, gates, bridges, and wildlife observation platforms.

d) The right to construct, repair and maintain new fences within the Protected Property, provided, however, that such new fence construction shall not have a negative affect on the movement of wildlife onto or off of the Protected Property. The Grantor shall provide notice to the Grantee pursuant to Section 4.7 of this Easement and obtain Grantee’s approval prior to the commencement of any work described in this Section 3.3(d). The Grantee’s approval of such work shall not be unreasonably withheld.

e) The right to install, maintain, and replace all necessary utility systems for any permitted structures on the Protected Property. Where possible, any extensions of existing utility systems or new utility systems shall utilize existing roads and clearings so as to minimize the impact on the Property’s Conservation Values. The Grantor may bury or otherwise camouflage all utility systems or extensions of the existing utility systems.

3.4 Roads. There shall be no building of any new roads, nor widening of existing roads; however, the Grantor reserves the following rights:

(a) The right to maintain and replace existing roads at the same location with roads of like size and composition.
(b) The right to widen existing roads for utility rights-of-way.

(c) The right to maintain roads which shall be limited to normal practices for non-paved roads, such as the removal of dead vegetation, necessary pruning or removal of hazardous trees and plants, application of permeable materials necessary to correct erosion, placement of culverts, water control structures, and bridges, and maintenance of roadside ditches.

3.5 **Leases.** There shall be no leasing of the Protected Property for uses inconsistent with the Purpose of this Easement. Notwithstanding the preceding sentence, the Grantor shall have the right, along with Grantor’s family, Grantor’s beneficiaries and Grantor’s guests, invitees and permitted hunting and/or sporting club members, and the heirs, devisees, beneficiaries, successors and assigns of the Grantor and Grantor’s hunting and/or sporting club members, to hunt and fish and conduct all activities incidental thereto upon the Protected Property, including, without limitation, scouting, stalking, marking trails, transporting materials by motorized vehicle for the construction, maintenance, repair, replacement, relocation and use of duck blinds, turkey blinds, deer and turkey stands and wildlife observation platforms permitted in Section 3.3, recovering game by the use of motorized vehicles and using motorized boats for fishing or transportation; provided, however, Grantor shall not conduct or permit any commercial hunting or fishing or lease for commercial purposes the hunting and/or fishing rights in respect of the Protected Property. This provision shall prohibit commercial “day hunting” or “pay per gun” uses only. A sporting and/or hunting club shall be specifically allowed.

3.6 **Water Resources.** There shall be no drainage, filling, dredging, tiling, or impairment in any way of any watercourse or wetlands within and upon the Protected Property. The Grantor reserves the following rights related to water resources so long as such rights do not adversely affect wetlands on the Protected Property:

(a) The right to develop and maintain those water resources and wetlands on the Protected Property necessary or beneficial to wildlife, private recreation, farming, and other agricultural uses permitted by this Easement, so long as such development and maintenance does not impair any of the water resources, wetlands, or riparian habitat existing on the Protected Property at the time of this Easement and shown in the Report. Permitted activities shall include, but are not
limited to, the right to develop, restore and enhance water resources for fisheries and wildlife improvement; and the right to undertake bank stabilization measures and stream and watercourse restoration. Prior to the commencement of any work described in this Section 3.6(a) other than maintenance, the Grantor shall provide notice to the Grantee pursuant to Section 4.7 of this Easement and obtain Grantee’s approval. The Grantee’s approval of such work shall not be unreasonably withheld.

(b) The right to restore, rebuild, maintain and improve impoundments as shown in the Report for fishing and wildlife.

(c) The right to repair, replace or maintain existing and/or historic wetland impoundments, levees, control gates and water control structures shown in the Report.

(d) The right to construct new impoundments and water control structures (“New Impoundments”) and to create new wetlands, waterways, ponds, lakes or sloughs through excavation. The impoundments, wetlands, waterways, ponds, lakes and sloughs are generally recognized by both Grantor and Grantee as beneficial to waterfowl and other wetland dependent plants and animals. To the greatest extent feasible and practical, management of any impoundments, wetlands, waterways, ponds, lakes and sloughs will be carried out in a manner that is conducive to providing feeding, nesting and loafing habitat for waterfowl, shorebirds, wading birds and birds of prey. The Grantor shall provide notice to the Grantee pursuant to Section 4.7 of this Easement and obtain Grantee’s approval prior to the commencement of any work described in this Section 3.6(d). The Grantee’s approval of such work shall not be unreasonably withheld.

(e) The right to undertake wetland restoration work. Wetland restoration work for the purposes of this easement is defined as the rehabilitation of altered wetland systems to enhance ecosystem functions such as the provision of quality habitat for waterbirds and other wetland species. This also includes the right to move and alter soil, including the removal of sand and gravel from former river channels, on the Protected Property for the purposes described within this section. The alteration and removal of soil used for wetland restoration work shall be
considered as a separate reserved right from Section 3.19. The Grantor shall provide notice to the Grantee pursuant to Section 4.7 of this Easement and obtain Grantee’s approval prior to the commencement of any work described in this Section 3.6(e). The Grantee’s approval of such work shall not be unreasonably withheld.

3.7 Clearing and Food Plots. The Grantor reserves the following rights related to food plots and clearing:

(a) The right to maintain and cultivate existing fields as shown in the Report;
(b) The right to maintain and cultivate the wildlife food plots existing on the Protected Property at the time of the execution of this Easement, as shown in the Report; and,
(c) The right to create new wildlife food plots: (i) on open lands and spaces existing at the time of the execution of this Easement, as shown in the Report, (ii) in openings resulting from activities permitted pursuant to the Timber Section 3.17 of this Easement, and (iii) along existing roads on the Protected Property. The Grantor may use native and non-invasive, non-native plant species traditionally and commonly used as of or prior to the date of this Easement in the food plots. Any new food plots shall each be less than two acres in size and shall cumulatively total no greater than 5% of the total size of the Protected Property; and,
(d) The right to clear invasive trees from riparian habitat along the North Platte River, restoring grasslands and natural riparian habitats.

3.8 Vegetation Maintenance. The Grantor reserves the following rights related to vegetative maintenance of the Protected Property:

(a) The right to cut and remove grass or other vegetation and to perform routine upkeep, maintenance, and landscaping, including but not limited to the planting of trees, shrubs, flowers, and other native and non-native plant species, consistent with the Purpose of this Easement, immediately around any permitted structures on the Protected Property. Subject to other provisions of this Easement, the right to selectively cut, burn, mow and clear trees and vegetation in existing fields for wildlife habitat enhancement and protection.
3.9 **Topography and Minerals.** There will be no filling, excavating, dredging, mining, drilling or use of any surface mining method; no removal of topsoil, sand, gravel, rock, peat, minerals, and no change in the topography of the land in any manner. Grantor reserves to itself, its successors and assigns all interest in subsurface minerals, gas, oil and other hydrocarbon products found or to be found in, on or under the Protected Property provided that Grantor shall cause any persons exploring for, developing or extracting minerals, gas, oil or related hydrocarbon products on or under the Protected Property shall insure the following:

A. No water shall be utilized on the Protected Property which would cause interference with surface water rights of Grantor, the wells and streams which exist on the Protected Property, or other sources of water on the Protected Property utilized by Grantor for agricultural purposes;

B. Access to exploration and/or extraction sites of minerals, gas, oil, or related hydrocarbons products shall be by existing roads;

C. Any surface disturbance resulting from permitted subsurface exploration or extraction activities shall be restored upon completion to a condition similar or equivalent to its state prior to the disturbance, by restoring soils and replanting suitable domestic vegetation;

D. Any wastewater resulting from such activities which is of materially poorer quality than the existing water supplies shall be treated so that its quality is substantially equivalent to existing water supplies;

E. There shall be no exploration or extraction of minerals, gas, oil or related hydrocarbons by any surface mining method, within the meaning of Section 170 (h) (5) (B) of the Code and the regulations promulgated thereunder, nor shall there be any exploration or extraction by any surface mining method if such activity would, in the sole judgment of the Grantee, result in the destruction of a significant natural, scenic wildlife habitat, or other conservation attribute of the Protected Property; and

F. The Grantor shall provide Grantee with advance written notice in compliance with Section 4.7 at least sixty (60) days prior to engaging in any exploration for or extraction of (or leasing, selling, or otherwise disposing of the rights thereto)
minerals, gas, oil and other hydrocarbon products from beneath the Protected Property whether or not such exploration or extraction (or leasing, selling, or otherwise disposing of the rights thereto) could result in any surface disturbance.

Both Grantor and Grantee recognize that a small amount of surface disturbance will occur in conjunction with subsurface oil, gas or mineral exploration and development, and that wells, tanks, pipelines and related equipment may be located on relatively small areas of the Protected Property for this purpose, and it is not the intent of this Easement to prohibit such exploration and development.

3.10 Non-Native or Invasive Species.

a. There shall be no purposeful introduction of non-native plant or animal species, except those non-native, non-invasive plant or animal species traditionally and prevalently used and only those which do not have a negative affect to the Conservation Values and Purpose of this Easement.

b. The Grantor reserves the right to control the spread of noxious or invasive plant species as may be needed to protect the Conservation Values of the Protected Property. The Grantor also reserves the right to control any form of nuisance, invasive, or non-native species on the Protected Property in order to protect the Conservation Values of the Protected Property. ‘Species’ shall include, but not be limited to, any mammals, birds, fish, reptiles, insects, molds, fungae, or any other non-plant species that may adversely affect the Protected Property’s Conservation Values. Control of any such species shall be undertaken in a manner that is consistent with the terms of this Easement and does not harm the Conservation Values of this Easement.

3.11 Agriculture. The Grantor reserves the right to conduct commercial agricultural activities. All agricultural activity shall be in accordance with sound, generally accepted agricultural practices. For purposes hereof, “agriculture” shall include, but not be limited to farming; ranching; and the production and sale of plant and animal products, including annual or seasonal planting of crops for grain, lint, sugar, fruits, vegetables, and biomass or other sources of bioenergy. “Ranching” shall include haying, pasturing, grazing of dedicated pastures and rotational grazing, feeding, watering, and caring for livestock. Farming shall occur only in areas designated as “cropland” in the Report. Ranching shall
occur only occur in areas designated as “pasture” in the Report, in riparian habitats along the North Platte River, and within areas designated as “cropland” in the Report. Grantor and Grantee further acknowledge and agree that intensive grazing of dedicated pastures and rotational grazing of other areas are compatible with the Purpose of this Easement. The following activities that are connected and related to agriculture are also expressly allowed: (i) the creation and maintenance of irrigation systems; and (ii) the location, construction, and maintenance of wells, watering facilities, ponds, windbreaks and shelters for cattle.

(a) *Feedlots prohibited.* The establishment or maintenance of a feed lot is prohibited. For purposes of this Easement, “feedlot” is defined as a permanently constructed confined area or facility which is used and maintained continuously or seasonally and exclusively for purposes of warm-up or fattening large numbers of livestock for market. Nothing in this Section shall prevent Grantor from leasing pasture for the grazing of livestock owned by others.

(b) *New Agricultural Activities.* Grantor shall notify Grantee pursuant to Section 4.7 prior to undertaking new agricultural activities not in practice at the time of the conveyance of this Easement and Grantee shall approve such activities pursuant to Section 4.7, and such approval will not be unreasonably withheld. Standard rotation of crops, or planting of new crops commonly grown in the region, within areas designated as “cropland” in the Report, is not considered a new agricultural activity. The conversion of cropland to grasslands, and the conversion of grasslands to cropland, in those areas designated in the Report as “cropland”, is not considered a new agricultural activity. All new and permitted agricultural activities must be conducted in a manner that enhances or does not cause significant harm to the Protected Property’s waterfowl habitat and conservation values.

3.12 **Environmental Credits and Government Programs.** The Grantor reserves the right to participate in Federal, State, or County conservation and/or preservation contracts, programs, or leases existing now or permitted in the future for any activity or use permitted on the Protected Property under this Easement, including but not limited to
United States Department of Agriculture Conservation Programs, the United States Fish and Wildlife Service’s Partners for Wildlife Program, carbon sequestration, carbon offsets, greenhouse gas credits, endangered species credits, water quality credits, or ground water credits. Any and all carbon offsets or credits attributable to or resulting from this Easement are expressly reserved by Grantor and may be conveyed by Grantor in Grantor’s sole discretion consistent with the terms of this Easement.

3.13 Hunting and Fishing. The Grantor reserves the right to undertake recreational hunting and fishing on the Protected Property of the Grantor, including Grantor’s members and their families, and Grantor’s members’ guests and the lease of all or a portion of the Protected Property to a private members hunting club. The Grantor reserves the right to participate in programs offered by non-profit organizations or by Federal, State, County or local government agencies, existing now or permitted in the future, which may allow temporary public access to the Protected Property for the purposes of recreational hunting and fishing, so long as the participation in such a program does not materially affect in an adverse manner waterfowl habitat located on the Protected Property, as determined by the Grantee in its reasonable discretion. Grantor shall provide notice pursuant to Section 4.7 of this Easement to the Grantee of participation in such programs, and the Grantee shall provide its approval pursuant to Section 4.7 of this Easement, which shall not be unreasonably withheld, conditioned, or delayed, so long as the Grantee determines that such participation shall not adversely affect the Protected Property’s Conservation Values.

3.14 Refuse and Underground Storage Tanks. No portion of the Protected Property shall be used for sanitary landfill, for the installation of any underground storage tanks, for the installation and use of an incinerator for the destruction of waste material or for the dumping, storing, disposal or treatment of refuse, trash, garbage, rubbish, junk, ashes, or hazardous substances or waste.

3.15 Pollutants. Neither Grantor nor Grantee shall release, generate, treat, dispose, or abandon any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment on the Protected Property. The Grantor reserves the right to
use agrochemicals, including, but not limited to, fungicides, fertilizers, biocides, herbicides and rodenticides, but only in those amounts and with that frequency of application as approved by the laws and regulations of the United States and the State of Nebraska and as constituting the minimum necessary to accomplish reasonable activities permitted by the terms of this Easement

3.16 **Signs.** There shall be no construction or placing of signs, including but not limited to billboards, or any advertising materials of any sort on the Protected Property; provided, however, that signs indicating and identifying ownership or occupancy, directional or trail signs, decorative signs at any entrances to the Protected Property, signs prohibiting trespassing, and signs advertising the sale of the Protected Property shall be permitted.

3.17 **Timber.** The Grantor reserves the right to cut and remove invasive trees, including but not limited to Russian olives, from the Protected Property for the purpose of restoring natural, riparian habitats along the Platte River. This also includes the right to cut and/or harvest dead or diseased trees and trees that present hazards to persons or property and to clear brush and trim trees affecting structures within the immediate vicinity of same.

3.18 **Nuisance Animals.** The Grantor reserves the right to control nuisance animals, including, but not limited to, feral pigs, coyote, beaver, and muskrat, by the appropriate use of control techniques permitted by local, state and federal laws and regulations. Where possible, all measures used for such control will be limited in their application to specific animals which have caused damage to livestock or other wildlife including, without limitation, endangered or threatened species of birds or wildlife, or to other property; provided, however, that if it is not possible to identify a specific predator or problem animal or when historic data indicates that a sufficient threat exists, Grantor may use appropriate preventive control techniques, such as the use of explosives for the removal of beaver dams. Grantor shall have the right to control rodents by any available lawful means which Grantor, in its sole discretion, desires to employ, so long as the intent and Purpose of this Easement is maintained.

3.19 **Borrow Pit.** The Grantor reserves the right to use one (1) borrow pit not to exceed one (1) acre in size, which shall provide required fill material for use on the Protected Property only, including, but not limited to, repairing roads or levees and other uses not inconsistent with the Purposes of this Easement. The fill material shall not be sold for
commercial purposes unless the fill material is being removed from former river channels as part of a specific wetland restoration plan approved by the Grantee prior to the removal of the fill material.

3.20 Recreational Rights. The Grantor reserves the right to engage in non-commercial recreational activities such as sporting clays, trap, skeet, and various shooting sports. The Grantor shall confine these activities to those portions of the Protected Property where such activities shall have a minimal effect on the Protected Property’s conservation values.

3.21 Use Inconsistent with Purpose. The parties recognize that this Easement cannot address every circumstance that may arise in the future. The Grantor has the right to engage in any and all acts or uses not expressly prohibited herein that are not inconsistent with the Purpose of this Easement. Any use or activity not herein reserved which is inconsistent with the Purpose of this Easement or which materially threatens the Purpose of this Easement is prohibited. In the event that there is a dispute between the Grantor and the Grantee as to whether or not an activity or use is prohibited under this Section, the parties will resolve the matter in accordance with the provisions of Section 4.18 of this Easement.

Section IV
GENERAL COVENANTS

4.1 Baseline Documentation Report. The specific Conservation Values of the Protected Property on the date of this Easement are documented in the Report, a copy of which is on file with both the Grantor and the Grantee. Both parties agree the Report provides an accurate representation of the Protected Property and the condition of the same as of the date of this Easement as required by Treasury Reg. 1.170 A-14 (g) (5), and is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement, and may include:

A) The appropriate survey maps from the United States Geological Survey, showing the property line of the Protected Property and other contiguous or nearby protected areas;

B) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and
identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);

C) An aerial photograph of the Protected Property at an appropriate scale taken as close as possible to the date the donation is made; and

D) On-site photographs taken at appropriate locations on the Protected Property; and other documentation possessed (at present or in the future) by the Grantor which the Grantor shall make available to the Grantee, its successors and assigns, which documentation establishes the conditions of the Protected Property at the date of this Easement as required by Treasury Reg. 1.170A-14 (g) (5). The parties intend that the Report shall be used by Grantee to monitor Grantor’s future uses of the Protected Property and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Protected Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy. Grantor and Grantee recognize that changes in agricultural technologies, including accepted farm and forest management practices may result in an evolution of agricultural activities on the Protected Property. Such evolution shall be permitted so long as it is consistent with the Purpose of this Easement, and does not in any way materially impair or interfere with the Conservation Values of the Protected Property.

4.2 Cost of Ownership. Grantor, its successors and assigns, shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. This includes the payment of any and all real estate taxes or assessments levied on the Protected Property by authorized local, county, state or federal officials. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement. Nothing in this Easement shall be construed as giving rise, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the property.
Protected Property, or any of Grantor’s activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), and the corresponding state statutes.

4.3 **Indemnification.** Grantor and Grantee (each and including any associated organization—such as Ducks Unlimited, Inc., in the case of Grantee—a “Party”) agree to hold harmless, defend, and indemnify the other Party (the “**Indemnified Party**”) from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation, reasonable attorney’s fees, arising from, or in any way connected with, an act or omission by the Party or the condition of or other matter related to or occurring on or about the Protected Property for which the Party is responsible that causes injury to or the death of any person or physical damages to any property unless the Indemnified Party also causes such injury, death, or damage.

Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and Ducks Unlimited, Inc., from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation, reasonable attorney’s fees, arising from or in any way connected with (1) the violation or an alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitations, CERCLA and the corresponding state statutes by any person other than Grantee or Ducks Unlimited, Inc., in any way affecting, involving, or relating to the Protected Property and (2) the presence or release in, on, from, or about the Protected Property, at any time, or any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirements as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by Grantee or Ducks Unlimited, Inc.

Notwithstanding anything herein to the contrary, nothing herein shall be construed to entitle the Grantee to assert any claims or to institute any proceeding under these indemnification provisions or otherwise against the Grantor for any changes to the
Protected Property due to causes beyond the Grantor’s control such as changes occurring due to natural causes or unauthorized acts of third parties. With respect to the indemnity provisions above relating to attorney’s fees and expenses, the Grantor and Grantee agree that: (i) Grantor shall not be responsible for any and all additional costs, expenses, or fees incurred by Grantee in retaining independent legal counsel in addition to counsel retained by Grantor pursuant to its obligations hereunder; and (ii) each party will bear all of its own costs and expenses, including attorneys’ fees and expenses in relation to any dispute between Grantor and Grantee.

4.4 Public Access. No right of access to the general public to any portion of the Protected Property is conveyed or created by this Easement.

4.5 Subsequent Conveyances. The Grantor shall include reference to this Easement in any subsequent deed or legal instrument by which the Grantor divests itself of either the fee simple in all or part of the Protected Property or its possessory interest in any portion of the Protected Property. The Grantor shall notify the Grantee pursuant to Section 4.7 of this Easement in writing of any changes in ownership, transfer of title or other conveyance of the Protected Property.

4.6 Subsequent Liens. No provision of this Easement should be construed as precluding the right of the Grantor to use this Protected Property as collateral for a subsequent monetary loan or other form of borrowing.

4.7 Notices and requests for approval.
(a) Notice and Approval Requirements. Grantor agrees to notify Grantee prior to undertaking any activity or exercising any reserved right where such notice is required herein. Grantor also agrees to obtain Grantee’s approval prior to undertaking any activity that requires such approval herein.

(b) Contents of Notice. Grantor’s notices must include sufficient information to enable Grantee to determine whether Grantor’s plans are consistent with the terms of this Easement and the conservation values and purposes hereof. Grantee shall not give its written consent and approval unless Grantor demonstrates that the proposed use, activities or exercise of reserved rights are consistent with the terms, conditions, and purposes of this Easement and will not diminish or impair the conservation values of the Protected Property.
(c) Method for Notice. Any notices or requests for approval required from the
Grantor by this Easement shall be in writing and shall be delivered: (i) in person (to be
evidenced by a signed receipt); (ii) by certified mail, return receipt requested; (iii) by
such commercial delivery service as provides proof of deliver; (iv) by regular U.S. mail;
(v) by facsimile; or, (vi) by electronic mail, to Grantors and Grantee, at the following
addresses, unless one has been notified by the other of a change of address or change of
ownership:

GRANTEE
Wetlands America Trust, Inc.
One Waterfowl Way
Memphis, TN 38120-2351
Attn.: Director of Land Protection

With copy to:
Ducks Unlimited, Inc.
2525 River Road
Bismarck, North Dakota 58503

GRANTOR
________________________________________
________________________________________
________________________________________

Such notice shall be deemed to have been given (i) when actually delivered in case of
personal delivery; (ii) when delivered as confirmed by an official return receipt if sent by
certified mail; (iii) within two business days of deposit with a commercial delivery
service; (iv) when actually received in the case of U.S. mail; (v) when sent as evidenced
with a confirmation of delivery if sent by facsimile; or (vi) when received if sent by
electronic mail.

(d) Time for Notice. Where Grantor is required to provide notice to Grantee pursuant
to this Easement, such notice as described hereinabove shall be given in writing thirty
(30) days prior to the event giving rise to the need to give notice except as otherwise specifically provided herein.

(e) Response by the Grantee. Grantee, upon receipt of Grantor’s request, shall acknowledge receipt of the same. Following review of the materials provided by Grantor, Grantee, shall grant, grant with conditions, or withhold its approval. Failure to approve Grantor’s request within forty-five (45) days from the date which it was received shall be deemed a grant of such request. No proposed activity may proceed without Grantee’s written consent and approval as provided herein. Any activity deemed a grant of approval through Grantee’s failure to respond in a timely manner that is inconsistent with the Conservation Purposes and Values of this Easement shall not be allowed.

4.8 Severability. In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms will remain valid and binding.

4.9 Perpetuity. The burdens of this Easement will run with the Protected Property and will be enforceable against the Grantor and all future owners in perpetuity during their respective periods of such ownership.

4.10 Assignment by Grantee. The benefits of this Easement shall be in gross and shall be assignable by the Grantee, only upon the following conditions: (i) the Grantee must require that the Purpose of this Easement continues to be carried out, and (ii) the assignee, at the time of the assignment, must qualify under Section 170 (h) of the Code, and applicable regulations thereunder, and under Nebraska law and must be eligible to receive this Easement directly. In the event Grantee ceases to exist or exists but no longer as a tax exempt, non-profit organization, qualified under Section 501 (c) (3) of the Code, this Easement shall automatically become vested in a tax exempt, non-profit organization qualified under Section 501 (c) (3) and 170 (h) (3) of the Code and which has experience in holding similar conservation easements as designated by the then owner of the Protected Property, and whose goals are consistent with the rights reserved by the Grantor. In any assignment of this Easement by the Grantee, the Grantee agrees to give preference to Ducks Unlimited, Inc., a not-for-profit corporation organized under the laws of the District of Columbia, One Waterfowl Way, Memphis, Tennessee 38120, if Ducks Unlimited, Inc., at the time of the assignment, is still a “qualified organization” as
described in the above paragraph. The Grantee shall obtain the consent of the U.S. Fish and Wildlife Service and the Nebraska Environmental Trust, Inc. prior to conveying or encumbering any portion of its Easement interest therein.

4.11 Judicial Extinguishment. If a subsequent, unexpected change in the conditions of the Protected Property or the surrounding property, make impossible or impractical the continued use of the Protected Property for conservation purposes, the Easement shall be extinguished by judicial proceeding and all the Grantee’s net proceeds, if any, from a subsequent sale or exchange of the Protected Property shall be used for conservation purposes.

4.12 Limitations on Extinguishment. If circumstances arise in the future that render the purpose of the Easement impossible to accomplish, the Easement can only be terminated or extinguished, whether with respect to all or part of the Protected Property, by judicial proceedings in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and after the satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of the Servitude, which amount is reserved to Grantor) in accordance with their respective percentage interests in the fair market value of the Protected Property, as such percentage interests are determined under the provisions of paragraph Section 4.13, adjusted, if necessary, to reflect a partial termination or extinguishment of the Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee’s corporate purposes as of the effective date of the Easement.

4.13 Percentage Interests. For purposes of this paragraph, the parties hereto stipulate that as of the effective date of this Easement, the Easement and the restricted fee interest in the Protected Property each represent a percentage interest in the fair market value of the Protected Property. Said percentage interests shall be determined by the ratio of the value of the Easement on the effective date of this Easement to the value of the Protected Property, without deduction for the value of the Easement, on the effective date of this
Easement. The values on the effective date of this Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Easement, pursuant to Section 170(h) of the Code. For purposes of this paragraph, the ratio (as finally determined in accordance with the preceding sentence) of the value of the Easement in proportion to the value of the Protected Property unencumbered by the Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Protected Property thereby determinable shall remain constant (except to reflect any amendment).

4.14 Eminent Domain/Condemnation. Whenever all or part of the Protected Property is taken in an exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Easement, Grantor and Grantee shall each take appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The net proceeds (including, for purposes of this section, proceeds from any lawful sale of the Protected Property unencumbered by the restrictions hereunder) will be distributed between the Grantor and the Grantee in shares in proportion to the fair market value of their interests in the Protected Property on the date of the execution of this Easement. The Grantee shall use its share of the net proceeds for conservation purposes.

4.15 Amendments. This Easement shall not be amended, modified, or terminated except in writing in a document signed by Grantor and Grantee. No amendment shall be allowed that would adversely affect the qualifications of this Easement as a charitable gift or the status of the Grantee under any applicable laws, including Section 170 (h) of the Code or the laws of the State of Nebraska. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, shall not permit additional development other than development permitted by this Easement on its effective date, and shall not permit any impairment of the significant Conservation Values of the Protected Property. Any such amendment shall be recorded in the land records of Scotts Bluff County, Nebraska. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment.

4.16 Notice of Breach, Enforcement, and Grantee’s Remedies. Grantee has the right to enforce this Easement by proceedings in law and in equity, including without limitation
the right to require the restoration of the Protected Property to a condition existing immediately prior to the violation complained of in compliance herewith. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose herein, to restore the portion of the Protected Property so injured to the condition existing immediately prior to the violation complained of. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages, costs, and attorney’s fees, or to require the restoration of the Protected Property to the condition that existed immediately prior to any such injury. Without limiting Grantor’s liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this Section without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee’s rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee’s remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Servitude, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee’s remedies described in this Section shall be
cumulative and shall be in addition to all remedies now or hereafter existing at law or in
equity. Nothing herein shall be construed to entitle Grantee to institute any proceedings
against Grantor for any changes to the Protected Property due to causes beyond Grantor’s
control such as changes occurring due to natural causes or unauthorized wrongful acts of
third parties.

4.17 Waiver of Rights. Grantee, its successors or assigns, does not waive or forfeit the right to
take action as may be necessary to insure compliance with this Easement by any prior
failure to act. The rights hereby granted will be in addition to, and not in limitation of,
any other rights and remedies available to the Grantee for enforcement of this Easement.

4.18 Resolution of Disputes. The parties shall promptly and in good faith attempt to resolve
any dispute arising out of or relating to this Conservation Easement. If those negotiations
are not successful, the parties shall in good faith attempt to resolve the dispute through
mediation. The parties shall appoint a mutually acceptable person. If the parties cannot
agree on who should serve as mediator, each party shall submit to the other a list of three
potential mediators acceptable to them. Each party shall then strike two names from the
list provided by the other. The two people remaining in the lists shall confer and jointly
name a mediator. The mediation will be held no later than ninety days after the dispute
has arisen, and the costs of the mediation shall be shared equally by the parties. Except as
provided in Section 4.16 of this Conservation Easement, no judicial action may be
instituted by either party until after such mediation has been held. If the mediation is not
successful and a judicial action is instituted, the parties shall not assert the defense of the
statute of limitations or laches based upon the time devoted to attempting to resolve the
dispute in accordance with this Section 4.18.

4.19 Warranty of Title. Grantor hereby warrants and represents that the Grantor is seized of
the Protected Property in fee simple and has the right to grant and convey this Easement
in perpetuity, that the Protected Property is free and clear of any and all encumbrances
except those matters of record, prescriptive easements, purchase money or other
mortgages, and mineral right reservations, if any, and that the Grantee and its successors
and assigns shall have the use of and enjoy all of the benefits derived from and arising
out of this Easement. Grantor certifies that all mortgages and deeds of trust (collectively
“Liens”), if any, affecting the Protected Property are subordinate to all rights of the 
Grantee under this easement.

4.20 Controlling Law. The interpretation and performance of this Easement shall be governed 
by the laws of the State of Nebraska.

4.21 Non-merger. No merger shall be deemed to have occurred hereunder or under any 
documents executed in the future affecting this Conservation Easement unless the parties 
expressly state that they intend a merger of estates or interests to occur.

4.22 Recording and Re-Recording. The Grantor shall record this instrument and any 
amendment in the official land records as soon as is practicable after all signatures have 
been obtained and the Grantee may re-record it and any amendments to the Easement at 
any time as may be required to preserve its rights in this Easement.

4.23 Entire Agreement and Counterparts. This instrument was drafted with the mutual efforts 
of Grantor and Grantee and sets forth the entire agreement of the parties with respect to 
the Easement and supercedes all prior discussions, negotiations, understandings, or 
agreements relating to the Easement, all of which are merged herein. This Easement may 
be executed in multiple counterparts. No alteration or variation of this instrument shall 
be valid or binding unless contained in an amendment that complies with Section 4.15.

4.24 LEGAL, TAX, AND OTHER ADVICE. GRANTOR REPRESENTS THAT IT HAS 
CONSULTED GRANTOR’S ATTORNEY, ACCOUNTANT, AND OTHER 
APPROPRIATE EXPERTS FOR ADVICE RELATING TO THIS CONSERVATION 
EASEMENT AND ANY POTENTIAL TAX BENEFITS THAT MAY INURE TO 
GRANTOR IN CONNECTION WITH THIS EASEMENT. GRANTEE REPRESENTS 
THAT GRANTOR HAS RECEIVED LIMITED GOODS OR SERVICES IN 
EXCHANGE FOR THIS EASEMENT. GRANTOR WARRANTS, REPRESENTS 
AND AGREES THAT GRANTEE HAS MADE NO WARRANTY OR 
REPRESENTATION RELATING TO (A) THE VALUE OF THE PROPERTY OR 
METHODOLOGY OR TECHNIQUES USED OR USEFUL IN ASCERTAINING OR 
APPRAISING THE VALUE OF THE PROPERTY (EITHER BEFORE OR AFTER 
THE GRANTING OF THIS CONSERVATION EASEMENT) OR (B) ANY 
ENTITLEMENT TO TAX BENEFITS BY GRANTOR OR THE AMOUNT OF ANY 
SUCH BENEFITS.
TO HAVE AND TO HOLD this Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or equity, either in possession or expectancy, for the proper use and benefit of the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has set his hand and seal and the Grantee has caused this Easement to be signed in its name and its corporate seal to be affixed hereto.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

GRANTOR:
[Grantor]
By: [Name]  
Witness: ____________________________
It's: [Title]  
Witness: ____________________________

State of ________________

County of ________________

On this __________ day of ________________, 2015, before me appeared ________________, to me personally known, who, being by me duly sworn, did say that he is the ________________ of ________________, a corporation of the State of ________________, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and said ________________ ____________________ acknowledged said instrument to be the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

______________________________
(Seal)
Notary Public
Printed Name: _____________________
My Commission Expires: ________________
GRANTEE:  
WETLANDS AMERICA TRUST, INC.

By: ______________________________ Witness: ______________________________
    Earl H. Grochau

Its: Assistant Secretary Witness: ______________________________

State of TENNESSEE  
County of SHELBY

On this the _______________ day of _____________________________, 2015, before me _____________________________, the undersigned officer, personally appeared Earl H. Grochau, who acknowledged himself to be the Assistant Secretary of Wetlands America Trust, Inc., a corporation, and that he as such Assistant Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Assistant Secretary.

In witness whereof I hereunto set my hand and official seal.

______________________________
Notary Public
Printed Name: ______________________________
My Commission Expires: ______________________________
Exhibit A
Legal Description of Protected Property

In Township 23 North, Range 56 West of the 6th P.M., Scotts Bluff County, Nebraska:
Section 30: Government Lots 2, 3, 4, 5, and 6, the NE1/4SW1/4, including all accretion
ground thereto, and the East 24 feet of the S1/2SE1/4.
Exhibit B
Water Rights of Protected Property

129.1 acres deep well water rights according to North Platte Natural Resources District plus surface water rights from Mitchell Irrigation District