

Prepared by and return to:  
Blue, Wheeler & Banks  
PO Box 1414  
Huron, SD 57350  
(605)352-6783  
(For NRCS)

131.483  
State of South Dakota, County of Roberts  
Filed this 20 Day of Feb 20 19 At 9:55  
O'Clock A M. Book 191 Page 237-256  
By [Signature]  
Register of Deeds Deputy  
Fees \$ 30.00

Department of Agriculture  
Natural Resources Conservation Service

NRCS-LTP-33  
05/2017

## WARRANTY EASEMENT DEED WITH RESERVATION OF GRAZING RIGHTS

### AGRICULTURAL CONSERVATION EASEMENT PROGRAM – WETLAND RESERVE EASEMENT EASEMENT NO. 5467401701MJJ

**THIS WARRANTY EASEMENT DEED** is made by and between Wetlands America Trust, Inc. of One Waterfowl Way, Memphis, Tennessee (hereafter referred to as the ("Landowner")), Grantor(s), and **the UNITED STATES OF AMERICA** and its assigns, (hereafter referred to as the "United States"), Grantee. The Landowner and the United States are jointly referred to as the "Parties".

The United States of America is acquiring this property by and through the Commodity Credit Corporation (CCC) and the acquiring agency of the United States is the Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

#### Witnesseth:

Purposes and Intent. The purpose of this easement is to restore, protect, manage, maintain, and enhance the functional values of wetlands and other lands, and for the conservation of natural values including fish and wildlife and their habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education. It is the intent of NRCS to give the Landowner the opportunity to participate in the restoration and management activities on the Easement Area.

Authority. This easement deed acquisition is authorized by Subtitle H of Title XII of the Food Security Act of 1985, as amended, for the Agricultural Conservation Easement Program - Wetland Reserve Easement.

**NOW THEREFORE**, for and in consideration of the terms of this mutual obligations and benefits recited herein to each party and the sum of Two Hundred Eighty-nine Thousand and Thirty-eight Dollars (\$289,038.00), paid to Grantor(s), the receipt of which is hereby acknowledged, Grantor (s) hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, (Grantee), ☒ in perpetuity or ☐ for a period of 30 years, the lands comprising the Easement Area described in Part I and appurtenant rights of access to the Easement Area, but reserving to the Landowner only those rights, title, and interest in the lands comprising the Easement Area expressly enumerated in Part II. It is the intention of the Landowner to convey and relinquish any and all other property rights not so reserved. This easement shall constitute a servitude upon the land so encumbered; shall run with the land for the duration of the easement; and shall bind the Grantor(s), their heirs, successors, assigns, lessees, and any other person claiming under them.

SUBJECT, however, to all valid rights of record, if any.

PART I. Description of the Easement Area. The lands encumbered by this easement deed, referred to hereafter as the Easement Area, are described on EXHIBIT A which is appended to and made a part of this easement deed.

TOGETHER with a right of access for ingress and egress to the Easement Area across adjacent or other properties of the Landowner. Such a right-of-way for access purposes is described in EXHIBIT B which is appended to and made a part of this easement deed.

PART II. Reservations in the Landowner on the Easement Area. Subject to the rights, title, and interest conveyed by this easement deed to the United States, including the restoration, protection, management, maintenance, enhancement, and monitoring of the wetland and other natural values of the Easement Area, the Landowner reserves:

- A. Title. Record title, along with the Landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.
- B. Quiet Enjoyment. The right of the Landowner to enjoy the rights reserved on the Easement Area without interference from others.
- C. Control of Access. The right to prevent trespass and control access by the general public subject to the operation of State and Federal law.
- D. Recreational Uses. The right to undeveloped recreational uses, including undeveloped hunting and fishing and leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time.

Undeveloped recreational uses may include use of hunting or observation blinds that will accommodate no more than four people and are temporary, non-permanent and easily assembled, disassembled and moved without heavy equipment. Undeveloped recreational uses must be consistent with the long-term protection and enhancement of the wetland and other natural values of the Easement Area.

- E. Subsurface Resources. The right to oil, gas, minerals, and geothermal resources underlying the Easement Area, provided that any drilling or mining activities are to be located outside the boundaries of the Easement Area, unless activities within the boundaries are specified in accordance with the terms and conditions of EXHIBIT C which is appended to and made a part of this easement deed, if applicable.
- F. Water rights and water uses. The right to water uses and water rights identified as reserved to the Landowner in EXHIBIT D which is appended to and made a part of this Easement Deed, if applicable.
- G. Grazing. The Landowner reserves the right to graze the Easement Area in accordance with the terms and conditions of EXHIBIT E, which is appended to and made a part of this Easement Deed.

PART III. Obligations of the Landowner. The Landowner shall comply with all terms and conditions of this Easement, including the following:

- A. Prohibitions. Without otherwise limiting the rights of the United States acquired hereunder, it is expressly understood that the rights to carry out the following activities and uses have been acquired by the United States and, unless authorized by the United States under Part IV, are prohibited on the Easement Area: 1. haying, mowing, or seed harvesting for any reason;
  - 2. altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover; except for grazing carried out in accordance with EXHIBIT E;
  - 3. accumulating or dumping refuse, wastes, sewage, or other debris;
  - 4. harvesting wood or sod products;
  - 5. draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices, except as specifically set forth in EXHIBIT D, if applicable;
  - 6. diverting or causing or permitting the diversion of surface or underground water into, within, or out of the Easement Area by any means, except as specifically set forth in EXHIBIT D, if applicable;
  - 7. building, placing, or allowing to be placed structures on, under, or over the Easement Area; except for individual semi-permanent hunting or observation

- blinds for undeveloped recreational uses the external dimensions of which will be no more than 80 square feet and 8 feet in height, with the number, locations, and features of blinds approved by NRCS under Part IV;
8. planting or harvesting any crop;
  9. disturbing or interfering with the nesting or brood-rearing activities of wildlife including migratory birds;
  10. use of the Easement Area for developed recreation. These uses include but are not limited to, camping facilities, recreational vehicle trails and tracks, sporting clay operations, skeet shooting operations, firearm range operations and the infrastructure to raise, stock, and release captive raised waterfowl, game birds and other wildlife for hunting or fishing;
  11. activities which adversely impact or degrade wildlife cover or other habitat benefits, water quality benefits, or other wetland functions and values of the Easement Area; and
  12. any activities to be carried out on the Landowner's land that is immediately adjacent to, and functionally related to, the Easement Area if such activities will alter, degrade, or otherwise diminish the functional value of the Easement Area.
- B. Noxious Plants and Pests. The Landowner is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by the NRCS prior to implementation by the Landowner.
- C. Fences. Except for establishment cost incurred by the United States and replacement cost not due to the Landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Landowner. The installation or use of fences which have the effect of preventing wildlife access and use of the Easement Area are prohibited on the Easement Area, easement boundary, or on the Landowner's land that is immediately adjacent to, and functionally related to, the Easement Area.
- D. Restoration. The Landowner shall allow the restoration and management activities NRCS deems necessary for the Easement Area.
- E. Access Maintenance. The Landowner is responsible to maintain any non-public portions of the access route described in Exhibit B such that the access route can be traversed by a standard four-wheel all-terrain vehicle at least annually.
- F. Use of water for easement purposes. The Landowner shall use water for easement purposes as set for in EXHIBIT D, which is appended to and made a part of this Easement Deed, if applicable.

- G. Protection of water rights and water uses. As set forth in EXHIBIT D, if applicable, the Landowner shall undertake actions necessary to protect any water rights and water uses for easement purposes.
- H. Taxes. The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.
- I. Reporting. The Landowner shall report to the NRCS any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the Easement Area.
- J. Survival. Irrelevant of any violations by the Landowner of the terms of this Easement Deed, this easement survives and runs with the land for its duration.
- K. Subsequent Conveyances. The Landowner agrees to notify NRCS in writing of the names and addresses of any party to whom the property subject to this Easement Deed is to be transferred at or prior to the time the transfer is consummated. Landowner and its successors and assigns shall specifically refer to this Easement Deed in any subsequent lease, deed, or other instrument by which any interest in the property is conveyed.

PART IV. Compatible Uses by the Landowner.

- A. General. The United States may authorize, in writing and subject to such terms and conditions the NRCS may prescribe at its sole discretion, the temporary use of the Easement Area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.
- B. Limitations. Compatible use authorizations will only be made if, upon a determination by NRCS in the exercise of its sole discretion and rights, that the proposed use is consistent with the long-term protection and enhancement of the wetland and other natural values of the Easement Area. The NRCS shall prescribe the amount, method, timing, intensity, and duration of the compatible use. Compatible use authorizations do not vest any rights in the Landowner and can be revoked by NRCS at any time.

PART V. Rights of the United States. The rights of the United States include:

- A. Management activities. The United States has the right to enter the Easement Area to undertake, on a cost-share basis with the Landowner or other entity as determined by the United States, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the Easement Area. The United States may apply to or impound additional waters, in accordance with State water law,

on the Easement Area in order to maintain or improve wetland and other natural values.

- B. Access. The United States has a right of reasonable ingress and egress to the Easement Area over the Landowner's property, whether or not the property is adjacent or appurtenant to the Easement Area, for the exercise of any of the rights of the United States under this Easement Deed. The authorized representatives of the United States may utilize vehicles and other reasonable modes of transportation for access purposes. To the extent practical, the United States shall utilize the access identified in EXHIBIT B. The United States may, in its discretion, conduct maintenance activities on the access route identified in Exhibit B to obtain physical access to the Easement Area for the exercise of any of the rights of the United States under this Easement Deed.
- C. Easement Management. The Secretary of Agriculture, by and through the NRCS, may delegate all or part of the management, monitoring or enforcement responsibilities under this Easement Deed to any Federal or State agencies authorized by law that the NRCS determines to have the appropriate authority, expertise and resources necessary to carry out such delegated responsibilities. State or federal agencies may utilize their general statutory authorities in the administration of any delegated management, monitoring or enforcement responsibilities for this easement. The authority to modify, subordinate, exchange, or terminate this easement under Subtitle H of Title XII of the Food Security Act of 1985 is reserved to the Secretary of Agriculture in accordance with applicable law. If the United States at some future time acquires the underlying fee title in the property, the interest conveyed by this Easement Deed will not merge with fee title but will continue to exist and be managed as a separate estate.
- D. Violations and Remedies - Enforcement. The Parties, Successors, and Assigns, agree that the rights, title, interests, and prohibitions created by this Easement Deed constitute things of value to the United States and this Easement Deed may be introduced as evidence of same in any enforcement proceeding, administrative, civil or criminal, as the stipulation of the Parties hereto. If there is any failure of the Landowner to comply with any of the provisions of this Easement Deed, the United States or other delegated authority shall have any legal or equitable remedy provided by law and the right:
1. To enter upon the Easement Area to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and,

2. To assess all expenses incurred by the United States (including any legal fees or attorney fees) against the Landowner, to be owed immediately to the United States.

#### PART VI. General Provisions.

- A. Successors in Interest. The rights granted to the United States shall accrue to any of its agents or assigns. All obligations of the Landowner under this Easement Deed shall also bind the Landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them. All the Landowners who are parties to this Easement Deed shall be jointly and severally liable for compliance with its terms.
- B. Rules of Construction and Special Provisions. All rights in the Easement Area not reserved by the Landowner shall be deemed acquired by the United States. Any ambiguities in this Easement Deed shall be construed in favor of the United States to effect the wetland and conservation purposes for which this Easement Deed is being acquired. The property rights of the United States acquired under this easement shall be unaffected by any subsequent amendments or repeal of the Agricultural Conservation Easement Program. If the Landowner receives the consideration for this easement in installments, the Parties agree that the conveyance of this easement shall be totally effective upon the payment of the first installment.
- C. Environmental Warranty. "Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, 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 or substance, 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.

"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 which may pose a present or potential hazard to human health or the environment.

Landowner warrants that it is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any government authority of any violation or alleged violation of, noncompliance or alleged non-compliance with or any liability under any



Environmental Law relating to the operations or conditions of the Easement Area. Landowner further warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials on, beneath, near or from the Easement Area..

- D. General Indemnification. Landowner shall 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 cost of actions, sanctions asserted by or on behalf of any person or government 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 Easement Area, which may arise from, but is not limited to, Landowner's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement Deed, or violations of any Federal, State, local or municipal laws, including all Environmental Laws.

**TO HAVE AND TO HOLD**, this Warranty Easement Deed is granted to the United States of America and its assigns forever. The Landowner covenants that he, she, or they are vested with good title to the Easement Area and will warrant and defend the same on behalf of the United States against all claims and demands. The Landowner covenants to comply with the terms and conditions enumerated in this document for the use of the Easement Area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this Easement Deed.

Dated this 22 day of January, 2019.

Landowner(s): **Wetlands America Trust, Inc.**

By:  (SEAL)

ITS: Assistant Treasurer





ACKNOWLEDGMENT

STATE OF Tennessee

COUNTY OF Shelby

On this 22 day of January, 2019, before me, the undersigned, a Notary Public in and for said State personally appeared Earl H. Grochau the Assistant Treasurer of Wetlands America Trust, Inc., know or proved to me to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Notary Public for the State of Tennessee  
Residing at Shelby County  
My Commission Expires 9/7/22

Jennifer Roy

ACCEPTANCE BY GRANTEE:

I Jeffrey J. Zimprich (name), State Conservationist (title), being the duly authorized representative of the United States Department of Agriculture, Natural Resources Conservation Service, do hereby accept this Warranty Easement Deed with respect to the rights and duties of the United States of America, Grantee.

Dated this 11<sup>th</sup> day of February, 2019.

Jeffrey J. Zimprich  
Signature

State Conservationist  
Title

This instrument was drafted by the Office of General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250-1400.

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## **NONDISCRIMINATION STATEMENT**

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its program and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (1202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 705-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

## **PRIVACY ACT STATEMENT**

The above statements are made in accordance with the Privacy Act of 1974 (U.S.C. 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other State or Federal Law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.



# PLAT OF WETLANDS AMERICA CONSERVATION EASEMENT TRACT 1

IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 128 NORTH,  
RANGE 52 WEST OF THE 5TH PRINCIPAL MERIDIAN, ROBERTS COUNTY, SOUTH DAKOTA.

## SURVEYOR'S CERTIFICATE

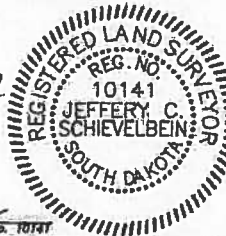
I, Jeffery C. Schievelbein, of Midwest Land Surveying, Inc., a Registered Land Surveyor in the State of South Dakota, do hereby state that I did, on or before this date, survey a portion of the East Half of the Northwest Quarter, and a portion of Government Lot 2 of Section 18, Township 128 North, Range 52 West of the 5th Principal Meridian, Roberts County, South Dakota, and plotted the same into Wetlands Conservation Easement Tract 1 in the Northwest Quarter of Section 19, Township 128 North, Range 52 West of the 5th Principal Meridian, Roberts County, South Dakota, as shown on the foregoing PLAT.

The same shall be known and described as WETLANDS CONSERVATION EASEMENT TRACT 1 IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 128 NORTH, RANGE 52 WEST OF THE 5TH PRINCIPAL MERIDIAN, ROBERTS COUNTY, SOUTH DAKOTA.

I further certify that the above PLAT correctly represents the same, is true and correct and that it was made at the request of the owners.

Dated this 8<sup>TH</sup> day of NOVEMBER, 20 17

*Jeffery C. Schievelbein*  
Jeffery C. Schievelbein, Registered Land Surveyor No. 10141



## OWNER'S CERTIFICATE

Know all men by these presents that (We/It) the undersigned, do hereby certify that (we and/or it) this absolute and unqualified owners of all land included in the within and foregoing plat; that the plat has been made at (our/its) request and under (our/its) direction for the purpose indicated therein; which said property as so surveyed and plotted shall hereafter be known as WETLANDS CONSERVATION EASEMENT TRACT 1 IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 128 NORTH, RANGE 52 WEST OF THE 5TH PRINCIPAL MERIDIAN, ROBERTS COUNTY, SOUTH DAKOTA as shown by this plat and that development of the land included within the boundaries of said Tract shall conform to all existing applicable easements, zoning, subdivision and erosion and sediments control regulations.

In witness whereof I have hereunto set my hand.

this 5<sup>TH</sup> Day of March, 20 18.

By: *Earl A. Smith*  
Wetlands America Trust, Inc.

As: Assistant Treasurer

State of Tennessee

County of Shelby

On this the 5<sup>TH</sup> day of March, 2018, before me, the undersigned officer, personally appeared *Earl A. Smith*, who acknowledged themselves to be the Assistant Treasurer of Wetlands America Trust, Inc., a corporation, and that they, as such *Earl A. Smith*, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by themselves as *Assistant Treasurer*.

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

*Jennifer Roy*  
Notary Public - State of Tennessee  
My Commission Expires: 12/14/18



## COUNTY PLANNING COMMISSION CERTIFICATION

I hereby certify that the following is a correct copy of the resolution duly passed by the County Planning Commission of Roberts County, South Dakota at a meeting held on the 11<sup>TH</sup> day of April, 20 18.

"BE IT RESOLVED BY THE COUNTY PLANNING COMMISSION OF ROBERTS COUNTY, SOUTH DAKOTA, THAT THE PLAT SHOWING WETLANDS CONSERVATION EASEMENT TRACT 1 IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 128 NORTH, RANGE 52 WEST OF THE 5TH PRINCIPAL MERIDIAN, ROBERTS COUNTY, SOUTH DAKOTA HAVING BEEN EXAMINED, IS HEREBY APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SDCL 1-2-2, AND ANY AMENDMENTS THEREOF."

*Donna Wooley*  
SECRETARY OF ROBERTS COUNTY PLANNING COMMISSION, SOUTH DAKOTA

## APPROVAL BY COUNTY

I hereby certify that the following is a correct copy of the resolution duly passed by the Board of Commissioners of Roberts County, South Dakota at a meeting held on the 11<sup>TH</sup> day of April, 20 18.

"BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ROBERTS COUNTY, SOUTH DAKOTA, THAT THE PLAT SHOWING WETLANDS CONSERVATION EASEMENT TRACT 1 IN THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 128 NORTH, RANGE 52 WEST OF THE 5TH PRINCIPAL MERIDIAN, ROBERTS COUNTY, SOUTH DAKOTA HAVING BEEN EXAMINED, IS HEREBY APPROVED IN ACCORDANCE WITH THE PROVISIONS OF SDCL 11-3, AND ANY AMENDMENTS THEREOF."

*Donna Wooley*  
COUNTY AUDITOR, ROBERTS COUNTY, SOUTH DAKOTA

## HIGHWAY AUTHORITY CERTIFICATE

The location of the proposed property lines abutting the county or state highway, or the county road as shown herein, is hereby approved. Any change in the location of the existing process or any new access shall require additional approval.

11<sup>TH</sup> Day of April, 20 18

BY: \_\_\_\_\_  
HIGHWAY AUTHORITY

TITLE: \_\_\_\_\_

## TREASURER CERTIFICATE

I, the Treasurer of Roberts County, South Dakota, do hereby certify that all taxes which are here upon any land shown in the above plat, as shown by the records of my office have been paid in full.

Dated this 11<sup>TH</sup> Day of April, 20 18

*Dina Wooley*  
TREASURER  
Roberts County, South Dakota

## DIRECTOR OF EQUALIZATION

I, the Director of Equalization of Roberts County, South Dakota, do hereby certify that a copy of the above and foregoing described plat has been filed in my office.

Dated this 27<sup>TH</sup> Day of March, 20 18

*Shawn Striber*  
DIRECTOR OF EQUALIZATION  
Roberts County, South Dakota

## REGISTER OF DEEDS

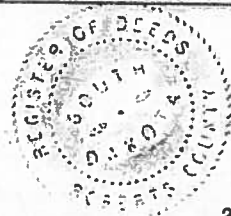
Filed for record this 11<sup>TH</sup> day of APRIL, 20 18, at

4:35 o'clock P.M., and recorded in Slide CAB. 2A T-65

*Caree Masterson*  
REGISTER OF DEEDS  
Roberts County, South Dakota Fee: 60.<sup>00</sup> 129.859

PREPARED BY:

**Midwest Land Surveying, Inc.**  
Land Surveying and GPS Consulting  
211 E. 14th Street Suite 100  
Sioux Falls, South Dakota 57104  
Phone: (605) 339-8901 FAX: (605) 274-8951



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CAB. 2A T-65

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**AGRICULTURE CONSERVATION EASEMENT PROGRAM  
WETLANDS RESERVE EASEMENT**

NRCS CONTRACT NO.        5467401701MJJ

LANDOWNER(S):            Wetlands America Trust, Inc.

**EXHIBIT B:**

Access to the Plat of Wetlands America Conservation Easement Tract 1 in the NW 1/4 of  
Section 19, Township 128 North, Range 52 West of the 5th Principal Meridian, Roberts County,  
South Dakota, by way of an access along 449<sup>th</sup> Avenue also noted on the survey plat as “existing  
approach”.

## **EXHIBIT C**

### **Subsurface Resource Rights**

Subsurface exploration activities and/or removal of minerals or oil and gas by the Grantors, or their successors, agents, or assigns within the boundaries of the Easement area may only take place upon authorization by NRCS and only in accordance with a plan developed by the Grantors, NRCS and USFWS. The plan must contain provisions which minimize adverse impacts to the wetland functions and values and must be in compliance with all Federal, State and local laws and regulations governing disturbance of wetlands. Such authorization can only be provided if, upon a determination of NERCS, in the exercise of its sole discretion and rights, that the proposed activity is not inconsistent with the long-term protection and enhancement of the wetland and other natural values of the Easement Area. If authorization is granted, NRCS shall prescribe the amount, method, timing, intensity, and/or duration of the authorized activity.



**EXHIBIT D**  
**WATER USES AND WATER RIGHTS**

**I. Water Uses and Water Rights Reserved to the Grantor ("Landowner")**  
(Warranty Easement Deed Part II.F.)

- A. Identify with specificity each water use<sup>1</sup> that the NRCS determines the Landowner may continue on, across, or under the easement area without harming the purposes of the easement.

No identified water rights.

- B. For each water use described above, identify the water right<sup>2</sup>, or portion of a water right, that is associated with that use. These are the only water rights, or portions of water rights, that the Landowner reserves for continuing agricultural or other uses. All details of each reserved water right, or reserved portion of a water right, must be specified, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.

No identified water rights.

- C. For each water right identified above, the Landowner retains the right to maintain, repair and reconstruct any existing water facilities associated with the right unless that activity would adversely impact the conservation values of the easement, as determined by NRCS in its sole judgment. The Landowner must obtain approval from the United States prior to commencing any substantial maintenance, repair, or reconstruction of

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<sup>1</sup> For purposes of this exhibit, the term "water use" means activities that control water or the use of water instream or in situ. The term includes, but is not limited to: diverting water from its natural source; conveying water in canals, ditches, laterals, flumes, or pipelines; storing water in reservoirs, impoundments, or ponds; pumping or otherwise controlling groundwater; developing springs; and intentionally leaving a quantity of water instream or in situ for a particular purpose.

<sup>2</sup> For purposes of this exhibit, the term "water right" means an instrument, filing, or document that is associated with a particular water use. The term "water right" may include, but is not limited to water permits, water shares or stock certificates, water reservations, water allotments, or water contracts.



existing facilities. "Substantial maintenance, repair, or reconstruction" means all activities that may adversely affect the purposes of the easement and includes, but is not limited to, the lining of irrigation works and the piping of water.

- D. Any use other than stated above for water rights the Landowner reserves requires the consent of NRCS following its determination that the action will not be inconsistent with the purposes of the easement or the protection of the conservation values. This includes, but is not limited to, changing a water right to any new use (including municipal, industrial or commercial use); selling, leasing, transferring, or encumbering the water right; and changing the point of diversion or type or place use.
- E. The Landowner reserves no other water rights or uses of water on, across, or under the easement area.

## **II. Encumbered Water Uses and Water Rights for Easement Purposes** (Warranty Easement Deed, Part III.D.)

- A. Describe with specificity water uses that the NRCS determines are necessary to accomplish the purposes of the easement.

No identified water rights.

- B. For each water use described in II.A. Above, identify any associated existing water right or portion of a water right. These water rights are encumbered by the Warranty Easement Deed<sup>3</sup> for easement purposes, together with any associated rights-of-way, water conveyance and diversion structures, and water use equipment. Specify below details of each encumbered water right, or portion of a water right, including the water right number, priority date or date of appropriation, date of permit or adjudication, source, flow, volume, point of diversion, place of use, period of use, means of conveyance and purpose of use.

No identified water rights.

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<sup>3</sup> By its terms, the Warranty Easement Deed also encumbers any water right appurtenant to the easement area that, for whatever reason, is not identified in this Exhibit D.

### **III. PROTECTION OF ENCUMBERED WATER RIGHTS**

(Warranty Easement Deed Part III.E.)

The Landowner shall protect the encumbered water uses and rights identified in II.A. and II.B. above by:

- A. Continuing to use the water for easement purposes so as to not abandon or forfeit any water rights by action or inaction.
- B. Providing NRCS with any reports provided by or to state water officials, of water diversions and evidence of use, such as records of dates of impoundment.
- C. Providing NRCS with all notices concerning water rights, including notices of abandonment or forfeiture, from state water officials.
- D. Allowing NRCS to enter property to continue use of the water right to prevent abandonment or forfeiture.
- E. Attempting to administratively prevent abandonment or forfeiture.
- F. Never changing the water right(s) to another use, including sale or transfer of such water right, or conversion to another conservation use.

## **EXHIBIT E – RESERVATION OF GRAZING RIGHTS**

### **Prairie Pothole Ecosystem, South Dakota**

The Parties enter this Exhibit E which authorizes the Landowner to reserve grazing rights provided Natural Resources Conservation Service (NRCS) determines that the reservation of the grazing right is:

- compatible with the land subject to the ACEP-WRE easement; and
- consistent with the long-term wetland protection and enhancement goals for which the easement is being established

#### **Ecosystem Description**

The majority of eastern SD is encompassed by the glaciated Prairie Pothole Ecosystem. The Prairie Pothole Ecosystem is an area of the Northern Great Plains and midgrass and tallgrass prairies that contains thousands of shallow wetlands known as potholes. These potholes were formed by glacier activity in the Wisconsin glaciation. The melting ice sheet left behind depressions formed by the uneven deposition of till in ground moraines. These depressions are called potholes. They fill with water in the spring, creating wetlands which range in duration from temporary to semi-permanent. These wetlands have historically been surrounded by mid and tall grass prairie. Native grasses include switchgrass, bluestems, indiangrass, western wheatgrass, green needlegrass, sideoats, among many others. Large herds of bison historically grazed these prairie wetland complexes creating diversity of grass composition and height. Typically large herds of bison grazed an area intensely for short durations before moving on. Grazing is essential to grassland management surrounding these wetlands. If left unmanaged, these grasslands get taken over by exotic invasive grasses such as smooth brome and Kentucky bluegrass. Herds of herbivores can also create vegetative diversity in the wetlands themselves. The prairies in this ecosystem are typically dominated by native warm season grasses, so intense early season grazing is needed to control cool season invasive grasses. Grasslands in the prairie pothole ecosystem also need varied grazing timing and intensity for proper management. The goal of management would be to create height and species diversity. Migratory birds in this area prefer approximately 10-12 inches of vertical structure in spring for nesting activities. So, a mix of cool and warm season grasses creating 12 inches of vertical structure between new growth and residual each spring would be optimal.

#### **Compatible Effects of Grazing**

The Prairie Pothole Ecosystem was historically a grassland dominated landscape that evolved under the influences of grazing by ungulates as well as fire, drought, and other climatic forces. Grazing by livestock in these prairie wetlands replicates a natural process and can be prescribed to maintain a healthy mix of grassland habitats, early successional wetland plants, open water, and mud flats. Grazing effects include both what the grazer eats and trampling effects from hoof action. As a result, it can be a tool to help control invasive vegetation which is often a primary threat to wetland functions. Unmanaged wetlands in this area are prone to being taken over by hybrid cattails or reed

canarygrass unless a management regime is prescribed such as grazing following a fire treatment or patch burn grazing. Also, intense grazing May through September may be appropriate near wetlands to allow migrating shorebirds ready access to mud flats for feeding. Different grazing management may be needed for different wetland types and any surrounding uplands. Each habitat type (wet meadow, shallow water march, upland prairie, etc.) has the potential to support different wildlife species, ranging from migratory birds to amphibians and pollinators, and management of these sites should strive to augment those qualities.

A grazing management plan will be required and followed to ensure that adequate disturbance and management is achieved. Intense early grazing in the Prairie Pothole Ecosystem helps promote native warm season grasses, and also assists in controlling the infestation of smooth brome and Kentucky bluegrass. Varying intensity and timing of grazing will be utilized when it furthers the function of the wetland and associated upland habitats.

The Parties hereby agree that the grazing of the easement area is a management tool necessary to achieve the desired wetland functions and values. The Landowner agrees to conduct grazing activity in accordance with the terms and conditions identified in this Exhibit and the grazing management plan which is a component of the Wetlands Reserve Plan of Operations (WRPO) developed with NRCS. The WRPO will identify the different wetland and upland habitat that is to be restored and maintained on the easement area, and thus guide the grazing management requirements necessary to manage these habitats.

To use grazing as a wetland and upland vegetation management tool, the grazing management plan must include the location, timing, intensity, frequency, and duration of grazing necessary to achieve the desired wetland functions and values of the ACEP-WRE easement area as described herein. In particular, the grazing management plan will:

- a. contain the provisions necessary to further the identified habitat and species goals and objectives described in the ACEP-WRE easement and this Exhibit herein;
- b. be compatible with the identified habitat and species goals and objectives, as described under NRCS Conservation Practice Standard Wetland Wildlife Habitat Management (644) and/or Upland Wildlife Habitat Management (645);
- c. include any livestock watering facilities or fencing. This infrastructure will include considerations for wildlife movement;
- d. include a plan map depicting grazing units, infrastructure (existing and proposed fence), and livestock watering facilities (existing and proposed locations) and the effects analysis for the infrastructure;
- e. include criteria to evaluate the effect grazing has on the desired habitat and include the flexibility to make annual adjustments in the location, timing, intensity, frequency, and duration of grazing to account for seasonal climatic factors that result in changes in forage production and subsequent impacts of stocking rates on the desired habitat conditions; and
- f. include periodic monitoring of the effects of grazing on fish and wildlife functions/services. NRCS may require changes to the grazing management plan to

address appropriate habitat features such as nesting, open water, invasive species control, or other factors that were not adequately addressed in the original grazing management plan but are necessary to achieve the goals and objectives of the ACEP-WRE easement and this Exhibit.