

PAGE: 1 of 8 EASE
Ohnstad Twichell, P.C.
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RECORDER'S OFFICE, CASS COUNTY, ND
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.
DEBORAH A. MOELLER, COUNTY RECORDER

6/29/2023 1:28 PM

by Sheva Garcia, Dep **1692244**
Recorded Electronically



BERM RIGHT OF WAY EASEMENT

THIS EASEMENT is made this 14th day of June, 2023, by **Carole G. Meyers, trustee of the Ruth E. Buchholtz Testamentary Trust created the 22nd day of August, 2003**, whose post office address is ("Grantor"); and the **Maple River Water Resource District**, a North Dakota political subdivision, whose post office address is 1201 Main Avenue West, West Fargo, North Dakota 58078 ("Grantee").

RECITALS

A. Grantee previously created the GARSTEIG-EMBDEN MAINTENANCE DISTRICT, a federal project maintenance district in accordance with North Dakota law for purposes of owning, operating, and maintaining several federally constructed water infrastructure features, including channel improvements commonly known as "Lynchburg Channel" and "Buffalo Channel" a legal assessment drain in certain portions of Cass County, in North Dakota (collectively, the "Channels").

B. Grantee has determined certain modifications are necessary to the Channels to reduce erosion, to protect the Channels, and to ensure the Channels continue to provide drainage benefits in the watershed, a project the District refers to as LYNCHBURG-BUFFALO PROJECT NO. 2016-01 (the "Project"); Grantee must acquire certain real property interests for purposes of constructing, managing, operating, and maintaining the Project.

C. Grantee is proceeding with Lynchburg-Buffalo Project No. 2016-01 Project (the "Project"); Grantee must acquire certain real property interests for purposes of constructing, managing, operating, and maintaining the Project.

D. Grantor owns certain real property adjacent to the Project, an area where Grantee must construct, manage, operate, and maintain the Project.

E. Grantor agrees to grant and convey to Grantee a permanent Berm Right of Way Easement upon, over, in, under, across, and through the property described below, subject to the terms and conditions contained in this Easement.

In consideration of the mutual covenants contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **The Berm Easement Property.** Grantor grants and conveys to Grantee a Berm Right of Way Easement, including the easement rights described in this Easement, upon, over, in, under, across, and through the following real property in Cass County, North Dakota:

That part of the East Half of the Southwest Quarter in Section 36, Township 139 North, Range 52 West of the Fifth Principal Meridian, Cass County, North Dakota, being a strip of land 60.00 feet wide, lying between lines drawn 80.00 feet and 140.00 feet westerly of, as measured at a right angle to and parallel with a line described as follows:

Commencing at an iron monument which designates the southeast corner of said Southwest Quarter; thence South 87 degrees 45 minutes 05 seconds West on an assumed bearing along the south line of said Southwest Quarter for a distance of 30.07 feet to the point of beginning of said line; thence North 20 degrees 17 minutes 05 seconds East for a distance of 77.48 feet to a point on the east line of said Southwest Quarter, said point hereinafter referred to as Point "A" and said line there terminates. The sidelines of said strip are to be lengthened or shortened to terminate on the south and east lines of said Southwest Quarter.

AND

That part of the East Half of the Southwest Quarter and that part of the East Half of the Northwest Quarter, all in said Section 36, being two strips of land, each 60.00 feet wide, lying between lines drawn 80.00 feet and 140.00 feet easterly of, and 80.00 feet and 140.00 feet westerly of, as measured at a right angle to and parallel with a line described as follows:

Commencing at the aforementioned Point "A"; thence North 20 degrees 17 minutes 05 seconds East for a distance of 385.97 feet; thence 193.14 feet northerly on a tangential curve concave to the west, having a radius of 700.00 feet and a central angle of 15 degrees 48 minutes 31 seconds; thence North 04 degrees 28 minutes 34 seconds East for a distance of 606.17 feet; thence 440.93 feet northwesterly on a tangential curve concave to the southwest, having a radius of 300.00 feet and a central angle of 84 degrees 12 minutes 41 seconds; thence North 79 degrees 44 minutes 07 seconds West for a distance of 43.43 feet to the east line of said Southwest Quarter, the point of beginning of said line; thence continuing North 79 degrees 44 minutes 07 seconds West for a distance of 106.76 feet; thence 336.92 feet northwesterly on a tangential curve concave to the northeast, having a radius of 700.00 feet and a central angle of 27 degrees 34 minutes 38 seconds; thence North 52 degrees 09 minutes 29 seconds West for a distance of 909.81 feet; thence 807.75 feet northerly on a tangential curve concave to the east, having a radius of 400.00 feet and a central angle of 115 degrees 42 minutes 07 seconds; thence North 63 degrees 32 minutes 38 seconds East for a distance of 366.98 feet; thence 326.75

feet northeasterly on a tangential curve concave to the northwest, having a radius of 300.00 feet and a central angle of 62 degrees 24 minutes 20 seconds; thence North 01 degree 08 minutes 18 seconds East for a distance of 330.38 feet; thence 673.04 feet northerly on a tangential curve concave to the east, having a radius of 900.00 feet and a central angle of 42 degrees 50 minutes 50 seconds; thence North 43 degrees 59 minutes 08 seconds East for a distance of 254.42 feet to the east line of the Northwest Quarter of said Section 36 and said line there terminates, said point of termination lies South 02 degrees 33 minutes 03 seconds East a distance of 805.46 feet from an iron monument which designates the northeast corner of said Northwest Quarter. The sidelines of said strips are to be lengthened or shortened to terminate on the east line of said Southwest Quarter, the west line of the East Half of said Southwest Quarter, the west line of the East Half of said Northwest Quarter and on the east line of said Northwest Quarter.

The above described tract contains 11.42 acres, more or less, and is subject to all easements, reservations, restrictions, and rights-of-way of record, if any.

The property described above is the "Berm Property."

2. **Grantee's Use of the Berm Right of Way.** Under the Berm Right of Way Easement, Grantor grants to Grantee, its officers, employees, agents, representatives, and contractors, a permanent and perpetual easement upon, over, in, under, across, and through the Berm Property for the following purposes: constructing, cleaning, inspecting, reconstructing, modifying, operating, maintaining, repairing, and improving containment berms and a back slope as necessary to accommodate the Project and the corresponding drain channel, and related appurtenances; excavating, piling, storing, depositing, spoiling, spreading, and removing excavated dirt, soil, clay, silt, and other materials; moving, storing, and removing equipment, materials, and supplies; removing trees, underbrush, obstructions, and any other vegetation, structures, or obstacles from the Berm Property; shaping and contouring the backslope to accommodate adjacent field drainage into the main drain channel via an open cut/ditch or through a culvert or pipe; and the right to perform any other work necessary and incident to the construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of the containment berms and a back slope as necessary to accommodate the Project and the corresponding drain channel, together with all necessary and reasonable rights of ingress and egress to and from the Berm Property. Under the Berm Right of Way Easement, Grantor will retain the right to use and farm the Berm Property, but only to the extent Grantor's use does not interfere with the Project, related appurtenances, or Grantee's rights under the Berm Right of Way Easement.

3. **Consideration.** Grantor specifically acknowledges the consideration paid represents full and final consideration to Grantor as compensation or damages regarding the Berm Property, any of Grantor's remaining property or the Project, and that Grantor is not entitled to any further payments, tax reductions, or damages under any state or federal statute, constitutional provision, rule or regulation, or other legal authority, with the exception of crop damages described in this Easement.

4. **Easement Runs With the Berm Property.** This Easement, and all covenants, terms, conditions, provisions, and undertakings created under this Easement, are perpetual and will run with the Berm Property, and will be binding upon Grantor's heirs, successors, and assigns.

5. **Structures and Personal Property.** Unless otherwise agreed by the parties, any buildings, structures, personal property, or other items left on the Berm Property on the date of Grantor's execution of this Agreement will automatically become Grantee's property, without the need for any bill of sale or any other written instrument or agreement; Grantee may remove or relocate any buildings, structures, personal property, or other items from the Berm Property at its sole discretion and at its sole cost.

6. **Crop Damages.** The District will place stakes on the Purchase Property and the Permanent Easement Property prior to spring planting in 2023 pursuant to the terms with respect to 2023 construction described more fully below by Seller or any of Seller's tenants; any planting inside of the stakes is at the risk of Seller or any of Seller's tenants, and the District will not reimburse Seller or any of Seller's tenants for any crop damages regarding any property inside the stakes placed by the District. In the event the District does not commence construction of the Project in 2023, the District will not reimburse Seller for lost profits or lost rent regarding any of the Purchase Property or any of the Permanent Easement Property inside the stakes. The District will reimburse Seller for reasonable crop damages resulting from the District's subsequent entrance upon the Permanent Easement Property for maintenance activities occurring in subsequent years. The District will calculate "reasonable crop damages" based on the area disturbed, actual production history, Seller's yields the year of the damages, and current crop prices at the time of the crop damages. While the parties anticipate construction will commence in 2023, in the event the District determines that construction will not occur in 2023, the District may remove the stakes prior to spring planting in 2023 and Seller may plant within the previously staked area, in which event the District shall not be responsible for crop damages for 2023. Furthermore, if construction does not occur in 2023, then in 2024 the District shall place stakes and use the crop damage calculations as described above for the year 2024.

7. **Taxes.** Grantor is solely responsible for all taxes and special assessments or assessments for special improvements due, levied, or assessed regarding assessments for the Berm Property; the Grantee will not be responsible for payment of any taxes or assessments regarding the Berm Property at any time.

8. **Grantor's Use of the Berm Property.** Grantor has the right and privilege to use the Berm Property at any time, in any manner, and for any purpose that is not inconsistent with Grantee's rights and privileges under this Easement. Grantor will not use, or permit use of, the Berm Property in any manner that disrupts or interferes with Grantee's use of the Berm Property, Grantee's rights and privileges under this Easement, with the Project. Grantor will promptly cease any activities and remove any structures or obstructions that interfere with Grantee's use of the Berm Property, Grantee's rights and privileges under this Easement or the Project, when directed by Grantee, at Grantor's sole cost. Grantor will repair or replace any of Grantee's structures,

facilities, right of way, or any other property owned by Grantee damaged by Grantor or as a result of Grantor's use of the Berm Property, at Grantor's sole cost. Grantor will not stockpile or introduce any additional fill, dirt, soil, clay, silt, or any other material on the Berm Property without Grantee's written consent. With the exception of normal cultivation practices, Grantor will not alter the existing topography of the Berm Property without Grantee's written consent.

9. **Maintenance.** Grantee will not be responsible for mowing, haying, or otherwise maintaining any portion of the Berm Property, with the exception of Grantee's rights to construct, clean, inspect, reconstruct, modify, operate, maintain, repair, or improve containment berms and a back slope as necessary to accommodate the Project channel and related appurtenances.

10. **Encumbrances.** Grantor will not encumber the Berm Property or enroll the Berm Property in any farm or other federal program that would be contrary to, or would in any way disrupt or interfere with, Grantee's use of the Berm Property, Grantee's rights and privileges under this Easement or with the Project. However, Grantor may rent or lease the Berm Property, at Grantor's sole discretion and without first obtaining Grantee's consent; and Grantor may mortgage the Berm Property, at Grantor's sole discretion and without first obtaining Grantee's consent. Any lessee's or mortgagee's rights and uses are subject to this Easement, including the use restrictions described above; Grantor will be fully responsible to Grantee for Grantor's obligations under this Easement, including any violations by any lessee or mortgagee.

11. **Waiver of Warranties.** The parties specifically agree neither Grantee nor any of its agents or representatives have made any representations or warranties in any way regarding the Project; Grantor's ability to use the Berm Property following construction of the Project; or Grantor's ability to enroll the Berm Property in any federal program.

12. **Tenants.** Grantor will promptly notify any of Grantor's Tenants of the Project, of Grantee's immediate rights under this Berm Right of Way Easement, and of the potential for disruption of any Tenant's farming activities prior to closing; Grantee will not be liable or otherwise responsible to any of Grantor's Tenants for interference with any Tenants' farming activities.

13. **Forbearance or Waiver.** The failure or delay of Grantee to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

14. **Governing Law.** This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

15. **Severability.** If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable.

16. **Entire Agreement.** This Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes any previous oral or written agreements between the parties.

17. **Modifications.** Any modifications or amendments of this Easement must be in writing and signed by Grantor and Grantee and must be recorded in the Cass County Recorder's Office.


18. **Representation.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Easement, and agree they have not been influenced by any representations or statements made by any other parties.

19. **Headings.** Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages.)

IN WITNESS WHEREOF, Grantor executed this Easement on the date written above.

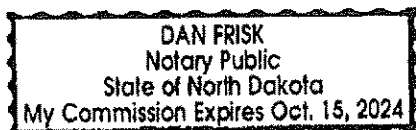
GRANTOR:


Carole G. Meyers, as trustee of the Ruth E.
Buchholtz Testamentary Trust created the
22nd day of August, 2003

STATE OF NORTH DAKOTA)
COUNTY OF Cass) ss.

On this 14th day of June, 2023, before me personally appeared Carol G. Meyers, known to me to be the Trustee of the Ruth E. Buchholtz Testamentary Trust created the 22nd day of August, 2003, described in and who executed the within instrument and acknowledged to me that she executed the same as Trustee of the Trust of the Ruth E. Buchholtz Testamentary Trust created the 22nd day of August, 2003.

(SEAL)



Notary Public, Car County, ND

Maple River Water Resource District
Right of Way Berm Easment – Ruth E. Buchholtz Trust
LYNCHBURG-BUFFALO PROJECT NO. 2016-01

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GRANTEE:

MAPLE RIVER WATER RESOURCE
DISTRICT

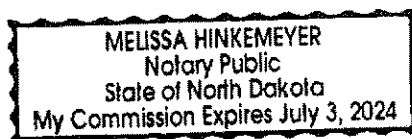
By: Rodger Olson
Rodger Olson, Chair

ATTEST:

Carol Harbeke Lewis
Carol Harbeke Lewis
Secretary-Treasurer

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this 19th day of June, 2023, before me, a Notary Public in and for said County and State, personally appeared Rodger Olson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Maple River Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Maple River Water Resource District.



Melissa Hinkemeyer
Notary Public, Cass County, ND

(SEAL)

The legal description contained in this document was prepared by:

Steven W. Holm
North Dakota License No. LS-6571
Moore Engineering, Inc.
925 - 10th Avenue E
West Fargo, ND 58078