

PUBLIC ACCESS LEASE
North Dakota Game and Fish Department
WILDLIFE HABITAT DEVELOPMENT LEASE

THIS LEASE is between the State of North Dakota, acting by and through the North Dakota Game and Fish Department ("Department"), a State Agency and the lessor described below, whether one or more ("Lessor"):

Name (Lessor(s)) John & Colleen Clancy			
Address P.O. Box 73	City Tower City	State ND	Zip 58071
Phone # 701-685-2457	County Barnes	File # 2403108	Cooperator Email

Name (Lessor(s)) Gerald & Carol Clancy			
Address 405 Edgewood Rd	City Thompson	State ND	Zip 58278
Phone # 701-599-2428	County Barnes	File # 2403108	Cooperator Email

BACKGROUND

The Department has established a Wildlife Habitat Development Program under N.D.C.C. §§ 20.1-02-05(18) and 20.1-02-27, to lease private lands on a short-term, multi-year basis to provide nesting, wintering, and other key wildlife habitat, as well as access for recreational purposes.

The wildlife habitat can be newly established cover, existing cover, or a combination of both.

The Department desires to provide and enhance wildlife habitat in locations most likely to benefit and sustain wildlife populations and to provide public access to this habitat for utilization of the wildlife resources.

The Lessor owns land suitable for nesting, wintering, and other key wildlife habitat, and desires to participate in the Department's program.

In consideration of the mutual agreements contained in this lease, the Department and Lessor agree as

In consideration of the mutual agreements contained in this lease, the Department and Lessor agree as follows:

1. WILDLIFE HABITAT LEASE

The Lessor, in consideration of the rent to be paid and the covenants to be performed, leases to the Department the following described property ("the Property") situated in Barnes County, North Dakota, containing **52.4** acres, more or less. A plat of the Property is attached as **Exhibit A** and is part of this agreement.

2. TERM OF LEASE

This lease commences on the **1st** day of January, 2017, or the date the agreement is signed by both parties, whichever is later, for a term of **36** months, and ending on the **31st** day of December, 2019, unless terminated earlier as provided in Paragraph 5 below.

3. PAYMENTS The Department and Lessor agree:

- a) Cost-sharing: The Department will reimburse the Lessor for **\$NA** per acre to establish herbaceous cover on the Property. But if the Lessor has received or will receive cost-share funding from other sources, the Department will only pay up to **\$NA** per acre. The Lessor must, to the satisfaction of the Department, provide documentation verifying out-of-pocket seeding costs. If the Lessor receives other cost-share funding for the Property after the Department has paid cost-share funding, Lessor will immediately reimburse the Department for an amount equal to the cost-share payment received from that source.
- b) Annual Rent: The Department will make annual lease payments for the Property according to the lease payment schedule attached as **Exhibit B**, and is part of this agreement. The Department will make annual lease payments by April 15th each year.
- c) Incentive Payment: The Department will make an up-front incentive payment for contracted acres to the Lessor if the property falls within Department designated priorities, to include, but not limited to, specific wildlife habitats of specific animal and plant species. The Department shall determine these rates.
- d) If enhancement/seeding is required, Department first year cost-share payment to Lessor, Department first year annual lease payment to Lessor, and Department upfront/one time enhancement payment to Lessor, as mentioned above in paragraphs 3(a), 3(b), and 3(c), will be disbursed by the Department to the Lessor: (1) by April 15; or (2) within 30 days after enhancement/seeding verification documentation is completed and the Department so notified; whichever is later.

4. LESSOR'S OBLIGATIONS The Lessor agrees:


- a) To lease the Property to the Department and for the benefit of the general public to provide public access for utilization of the wildlife resources. This lease is non-exclusive and the Lessor is permitted to enter upon the Property to perform the obligations and covenants contained herein, and to utilize the Property for walk-in public access for hunting, fishing and other recreational uses;
- b) To allow, without any restriction, public access for walk-in hunting on the Property. Lessor grants permission to allow public hunting or pursuit of game in Lessor's, or, applicable, that Lessor's Tenant's, unharvested cereal grains or sunflowers on the Property under North Dakota Century Code section 20.1-01-22 unless otherwise agreed.



If so agreed, as indicated by a check in the box and the initials of both parties immediately below, no public access will be allowed to the Property on standing crops until harvested. In that event, the Department will designate these areas with "No Hunting in Unharvested Crops" signs. Access shall be allowed to standing crops on the Property if the Property is isolated within standing crops:

☐ NO Access to the Property allowed on Standing Crops until harvested.

_____ (Lessor's initials)

_____ (Department's initials)

- c) To preserve existing herbaceous cover (Habitat – non-cropland) and/or to seed and properly establish and/or preserve a grass-legume mixture (Habitat – cropland) on the Property. The Lessor will use the seeding mixture as described in the attached Management Plan (Exhibit C) on all New Habitat Establishment acres;
- d) To protect the Property from all agricultural uses, harvest of timber, gravel, or fill, or other uses detrimental to establishing and maintaining wildlife habitat;
- e) To remove and not permit erection or placement of any signs on the Property, the effect of which is to limit, impede, restrict, or prohibit public access to the Property;
-  f) To control noxious weeds on the Property as required by State law. Notwithstanding Lessor's duty to control noxious weeds, Lessor agrees not apply chemical pesticides, mow, hay, or graze any portion of the Property except as provided herein. Pesticide spraying, tillage, or mowing may be allowed for noxious weed control only upon written approval by the Department, which approval will not be unreasonably withheld or delayed. Weed control practices are limited to only those areas where noxious weeds are found to exist.
- g) To permit the Department, or its agents, to post signs upon the Property that it is open to public use for walk-in access and to publish the same;

- h) To allow the Department, upon a nonrenewal, termination, or expiration of this lease, 180 days to remove Department posted notices referred to in paragraph 4g above. In the alternative, the Lessor may personally assume the responsibility to remove Department posted signs within those 180 days and so notify the Department. Lessor removal of Department signs will be at no cost to the Department, the Lessor is then responsible for any damage to the signs resulting from Lessor removal, and the Lessor is responsible to arrange the return of such Lessor-removed signs to the Department;
- i) To not charge or accept any fee, payment, or any form of remuneration from the public for hunting access or privileges to the Property;
-  j) To not enroll the Property in any other State or Federal conservation program that provides any payment to Landowner which may interfere in any way with this agreement, which includes, but is not limited to: Conservation Reserve Program (CRP), Conservation Reserve Enhancement Program (CREP), Waterbank (State or Federal), Wetland Reserve Easement (WRE), Conservation Securities Program (CSP), or Migratory Bird Habitat Initiative, Prairie Pothole Wetland and Grassland Retention Program (PPWGRP), Environmental Quality Incentive Program (EQIP), and Honey Bee Pollinators Program (HBP) without prior approval from the State. If the landowner participates in any such program without prior approval from the State, the landowner shall reimburse the State all State payments to the landowner made under this Agreement. The State in its sole discretion, may waive landowner reimbursement of such payments in full or in part.
- k) To restore, at the Lessor's expense, the Property to the condition required by this lease if the Lessor grants any new right-of-way utility easements, the effect of which causes the herbaceous cover to be disturbed. Restoration must be completed within a reasonable time not to exceed six months; and,
-  l) Upon written approval by the Department, habitat rejuvenation practices may be allowed to re-establish productive wildlife habitat on the Property. Such practices include, but are not limited to, clipping, mowing, or controlled burning as described in the Management Plan (**Exhibit C**). Even if a State drought emergency exists during which the county has been declared an emergency area, the Lessor may not hay or graze the Property except as provided in this agreement;

5. TERMINATION OF LEASE AGREEMENT

- a) This Lease may be terminated by Lessor upon 30-days written notice to the Department and the mutual, written consent of Department. In the event of this lease being so terminated prior to the expiration date, the Lessor will repay the current annual lease payment, and all upfront payments, including incentive payments, received from the Department under this agreement.

- b) This Lease may be terminated by the Department, without cause and without liability to the Department, upon 30-days written notice to Lessor. The Department, without any liability, may terminate this lease agreement on 30 days written notice if its legislative appropriations are reduced or if its authority to spend its appropriations is reduced or limited by law or by reductions in federal or other grant funds to a point the Department, in its sole discretion, deems insufficient to pay the full rental cost for the remaining term. In the event of this lease being so terminated prior to the expiration date, no additional payments shall be made by the Department to Lessor. Notwithstanding, this agreement may be modified by agreement of the parties in writing to accommodate a reduction in funds.
- c) During the lease term or any renewal or extension thereof, the Department may terminate this lease with cause on 30 days written notice to the Lessor if the Lessor fails to comply with any of its obligations under this lease. Upon such termination, the Lessor will immediately return the current year's annual lease payment (see paragraph 3(b)) to the Department. No additional payments shall be made by the Department to Lessor. In addition, the Lessor shall reimburse all upfront payments made in accordance with paragraphs 3(a) and 3(c) above in full to the Department.

The Department may seek to enforce Lessor's obligations under this agreement by legal action in any court of competent jurisdiction in the State of North Dakota. It is expressly agreed that in the event of suit or other legal proceedings to enforce any part of this agreement, Lessor agrees to pay all of the Department's attorney's fees and expenses.

The rights and remedies of the Department provided in paragraph 5(c) related to defaults (including breach of contract and breach of lease) by the Lessor are not exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

6. TRANSFER OF OWNERSHIP

This lease is binding upon the successors, administrators, heirs, and assigns of Lessor. A change in ownership of the Property causes this lease to terminate at the end of the contract year in which the transfer occurs. Such termination is without prejudice to the rights and obligations accrued by the parties during that current contract year.

If the Lessor sells or otherwise divests the ownership of the Property, Lessor will notify the Department within **30 days** of the transfer, giving the name(s) and address(es) of the transferee(s). Failure to give notice is a breach of this lease. At the end of the contract year in which the transfer occurs, the new landowner may continue this lease under the same terms, or enter into a new lease, or the new landowner may choose not to participate in the program.

In addition, the Lessor shall reimburse all upfront one time enhancement incentive payments made in accordance with paragraph 3(c) above in full to the Department. The Department, in the sole discretion of the Director, may prorate or waive, in full or in part, reimbursement by the Lessor to the Department of upfront incentive and cost-share payments based upon the circumstances of the transfer of ownership.

7. LIMITED LIABILITY OF RECREATIONAL LANDOWNER

It is understood by the parties that this lease is entered into, among other purposes, to allow access to the Department for recreational purposes as defined by N.D.C.C. § 53-08-01(5). N.D.C.C. § 53-08-04 limits the liability of an owner of land so leased to the Department.

8. LESSOR OWNER OF PROPERTY, HUNTING AND FISHING RIGHTS

Lessor covenants and certifies that Lessor currently owns the Property, including all hunting and fishing rights and privileges to the Property subject to this lease, and that no easement, license, lease, or other interest granting, transferring, or divesting Lessor of these hunting and fishing rights and privileges exists. Lessor agrees that Lessor, not the Department, is responsible to pay any applicable remuneration accruing as a result of this agreement to any other person or persons who may have a property interest in the property, to include remaindermen or others.

Lessor covenants and certifies that, in regards to the property subject to this lease, Lessor is not a party to, and not receiving payments from, any other Federal or State habitat, conservation or other land management agreement. Lessor will notify the Department at least 30 days before Lessor enters into any such agreement.

9. SEVERABILITY

The parties agree that if any term or provision of this lease is declared by a court of competent jurisdiction to be invalid, the validity of the remaining terms and provisions are not affected, and the rights and obligations of the parties will be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

10. APPLICABLE LAW

North Dakota law governs this agreement.

11. MERGER

This lease is the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this lease.

LESSOR(s)

Colleen Clancy
Colleen Clancy

DATE:

11-21-16

NORTH DAKOTA GAME & FISH DEPARTMENT

Terry Steinwand
BY: Terry Steinwand
ITS: Director

DATE:

12/16/16

LESSOR(s)

Gerald H Clancy
Carol Clancy

DATE:

11-26-16

Agreement written by: **Rena Schultz** on November 17, 2016

EXHIBIT B
PAYMENT INFORMATION

PROGRAM ACRES	Acres	Rate	Payment
Habitat - Cropland		\$	\$
Habitat – Non-cropland	52.4	\$21.00	\$1,100.40
TOTAL PROGRAM ACRES	52.4	TOTAL ANNUAL PAYMENT	\$1,100.40

	Acres	Rate	One-Time Up-front Payment
New Habitat Establishment Cost- share		\$	\$
Habitat Incentive Payment		\$	\$

Comments:

John-50% \$550.20

Gerald-50% \$550.20

EXHIBIT "A"
NORTH DAKOTA GAME & FISH DEPARTMENT
WILDLIFE HABITAT DEVELOPMENT PROGRAM

LESSOR(S) : John, Colleen, Gerald, Carol Clancy AGREEMENT: 2403108

PUBLIC ACCESS AND WILDLIFE HABITAT DEVELOPMENT LEASE FOR:

Barnes COUNTY, STATE OF NORTH DAKOTA

T. 141 N., R. 58 W., Section 36 Total Acres 52.4



Access Boundary



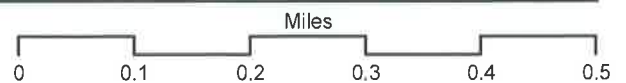
Section Lines



Habitat - non-cropland



Habitat - Cropland



Scale 1:10,560
1 inch equals 880 feet

EXHIBIT C
MANAGEMENT PLAN

Purpose of this Agreement:

To maintain the habitat acres Idle

Intended Benefits of Management:

To provide habitat for wildlife

Management Plan:

To maintain the habitat acres Idle