

AGREEMENT
NORTH DAKOTA GAME AND FISH DEPARTMENT

This Agreement ("Agreement"), is made between Diane and Pete Sherman, Grantor), and the State of North Dakota, through the North Dakota Game and Fish Department, 100 North Bismarck Expressway, Bismarck, ND 58501-5095 ("State"), Grantee.

Purposes and Intent. The Agreement's purpose is to provide and enhance fish and wildlife habitat in locations most likely to benefit and sustain fish and wildlife populations. **No rights are granted to the general public for access to or entry upon the lands described herein.** Grantor, in exchange for compensation paid by the State, now desires to provide the State with an Agreement for such purposes.

WHEREAS, N.D.C.C. § 20.1-02-05(7), (18) and (19), and chapter 47-05 authorize the State to acquire Agreements on eligible lands to establish conservation practices to enhance fish and wildlife habitat considered beneficial to fish and wildlife;

WHEREAS, the State has developed an Aquatic Habitat Program (Save Our Lakes), the purpose of which is to construct wetlands, exclusion areas and sediment traps above reservoirs and ponds and acquire riparian corridors to capture sediment and high nutrient levels deemed harmful to the aquatic habitat; and

NOW, THEREFORE, for and in consideration of the sum of Eighteen thousand eight hundred twenty one dollars (\$ 18,821.00), receipt of which is hereby acknowledged, the Grantor hereby grants, conveys, and warrants to the State, its successors and assigns, an Agreement in accordance with the terms and conditions set forth herein for a term of 10 years on the following land in the County of Sargent, State of North Dakota, containing 15.09 acres, more or less, identified as follows, and more particularly described in **Exhibit A** attached hereto:

This parcel of property is contained within NE 1/4 Sec. 25 T130N 54W

FURTHER, this Agreement constitutes a servitude upon the land so encumbered; runs with the land and binds the Grantor, their heirs, successors, assigns, lessees, and any other person claiming under them, subject, however, to all valid rights of record, if any. This Agreement is subject to all prior Agreements, roadways, and mineral rights of record.

FURTHER, the Grantor represents and warrants that they are the sole owners of the property in fee simple and have good and marketable title to be able to convey this Agreement.

FURTHER, the Grantor represents and warrants that Grantor has no knowledge of any hazardous substances, pollutants, or contaminants in or on the Agreement area, and that the Grantor, their heirs, successors, assigns, lessees, and any other person claiming under them shall not place any toxic or hazardous substances, pollutants, or contaminants in or on the Agreement area except for the necessary use of agricultural fertilizers and government-approved pesticides to control weeds and pests.

Obligations of the Landowner. The Grantor shall comply with all terms and conditions of this Agreement, including the following:

1. The Grantor, their heirs, successors, assigns or lessees, shall manage the established herbaceous cover for the purpose of habitat rejuvenation per the following management schedule agreed to by the Grantee and Grantor.
2. Without otherwise limiting the rights of the State granted herein, the following activities and uses are prohibited on the Agreement area:
 - a. Haying, mowing or seed harvesting except as described in the management schedule;
 - b. Altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting or otherwise destroying the vegetative cover except as described in the management schedule;

- c. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with ground control structures or devices;
 - d. Diverting or causing or permitting the diversion of surface or underground water into, within, or out of the Agreement area by any means;
 - e. Planting or harvesting any crops, and
 - f. Grazing or allowing livestock on the Agreement area except as described in the management schedule.
3. The following activities and uses are prohibited on the Agreement area:
 - a. Dumping refuse, wastes, sewage, or other debris;
 - b. Building or placing buildings or structures on the Agreement area.
 4. Grantor shall control noxious weeds and pests on the Agreement area by complying with noxious weed control laws and emergency control of pests necessary to protect the public health.
 5. Grantor shall allow the State, through its authorized agents, to have access to the Agreement area for purposes of inspection to verify compliance with this Agreement's terms.
 6. Grantor shall pay when due any and all real property and other taxes and assessments, if any, which may be levied against the Agreement area.
 7. Grantor shall notify the State, in writing, of the names and addresses of the new owners within 30 days after the conveyance of all or part of the title or interest of the land described herein.
 8. If Grantee determines that a fence needs to be constructed on the Agreement area the Grantee will pay for 100% of the materials and labor in the initial construction of the fence.
 9. If Grantee determines that an alternate water source needs to be established on the Agreement area the Grantee will pay for 100% of the materials and labor in the initial construction of the water source.
 10. Grantor are responsible for all maintenance to improvements, paid for or cost shared by the Grantee, (i.e. fences, gates, pumps or wells).

FURTHER, the State and Grantor agree that this Agreement may be introduced in any enforcement proceeding as the stipulation of the parties hereto. If there is any failure of the Grantor to comply with any of the provisions of this Agreement, the State or other delegated authority may enforce this Agreement as provided in N.D.C.C. § 47-05-10, and by such other relief as may be authorized by law. Any ambiguities in this Agreement shall be construed in a manner which best effectuates the purposes of trapping sediment, removing excess water nutrients, preventing soil erosion, and preserving and developing wetland habitat.

Indemnification. The State and the Grantor each agrees to assume its own liability for any and all claims of any nature including all costs and expenses which may in any manner result from or arise out of this agreement.

Mineral Development. Grantor expressly acknowledges that mineral extraction is detrimental to this Agreement's purposes. The Grantor warrant that if Grantor, before this Agreement was executed, conveyed an unexpired surface or subsurface mineral lease, or someone other than the Grantor own the mineral rights, and the lessee or owner thereof exercises the right to extract minerals from or below the Agreement area during the Agreement term, the State may terminate the Agreement. The Grantor further warrant that if the Grantor, their heirs, successors, assigns, lessees, and any other person claiming under them, enter into a mineral lease or sell the mineral rights to the Agreement area after the Agreement is executed, and during the Agreement term the lessor or owner of the mineral rights exercised the right to extract minerals, the State may terminate the Agreement. If the State terminates this Agreement pursuant to this paragraph, Grantor, their heirs, successors or assigns, will pay damages to the State equal to the full amount of consideration paid herein. For purposes of this Agreement, "minerals" means oil and gas, and coal, ores, gravel, sand, stone, clay, scoria, uranium, and other solid materials or substance of commercial value and which may be extracted in solid form from natural deposits on or in the earth.

Breach of Contract – Liquidated Damages. This contract benefits the public, and specific performance is required unless the Grantee, in Grantee's sole discretion, finds that emergency circumstances or the public interest necessitate cancellation of the contract. If the Grantee determines in Grantee's sole discretion that specific performance is not required, the parties shall apply the following liquidated damages clause: because of the difficulties that would arise in determining the Grantee's damages upon Grantor's breach, the parties, after careful consideration, agree that Grantor will repay, as damages, interest at the prime rate, plus all cost share funds, bonus payments, incentive payments, and administrative expenses paid, or any costs of any infrastructure incurred by the Grantee under this agreement. The Grantor also agrees to repay any and all infrastructure costs paid by Grantee. It is expressly agreed that in the event of suit or other proceedings to enforce any part of this agreement, and Grantee is the prevailing party, Grantor agrees to pay all of the Grantee's attorney's fees and expenses.

Merger and Modification: This Agreement is the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified with this Agreement. This Agreement may not be modified in any manner except by written agreement signed by both parties.

Severability: If any term of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain the term.

Applicable Law and Venue: This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota.

Spoilage: Grantor agree to promptly notify the State of all potential claims that arise or result from this Agreement. Grantor further agree to take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a claim, while maintaining public safety, and to grant to State the opportunity to review and inspect the evidence, including the scene of the accident.

IN WITNESS WHEREOF, the Grantor have caused this Agreement to be duly executed.

GRANTOR SIGNATURE AND ACKNOWLEDGMENT

Dated this 16 day of December, 2019.

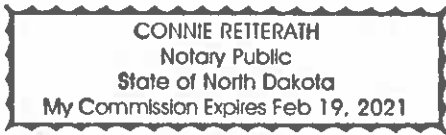
Pete Sherman

Diane Sherman

STATE OF NORTH DAKOTA) ss
COUNTY OF BARNES)

On this 16 day of December, 2019, Pete Sherman, Diane Sherman, known to me to be the persons who are described in and who executed this Agreement, and acknowledged to me that they executed the same.

Connie Retterath
Notary Public, BARNES County
State of North Dakota
My Commission Expires: Feb 19, 2021



Notary Seal

Dated this _____ day of _____, 20____.

IN WITNESS WHEREOF, the Grantee/State have caused this Agreement to be duly executed.

GRANTEE/STATE SIGNATURE AND ACKNOWLEDGMENT

N.D. Game & Fish Department

By: Title:

STATE OF NORTH DAKOTA) ss
County of Burleigh)

On this _____ day of _____, 20____, before me personally appeared _____, known to me to be the _____ and acknowledged to me that said person did execute the foregoing Agreement for and on behalf of the State of North Dakota, acting through the North Dakota Game and Fish Department.

Notary Public, _____ County
State of North Dakota
My Commission Expires: _____

EXHIBIT A

[Real Estate Survey – Metes and Bounds Description]

or

[Plat / Aerial Photo / FSA Map – for Platted Property or Square Sections]



MANAGEMENT SCHEDULE**Special amendment to: Item #2. GRANTOR'S OBLIGATIONS (Exhibit B)**

- d) To protect the wildlife Habitat Property from all agricultural uses, harvest of timber, gravel, or fill, or other uses detrimental to establishing and maintaining wildlife habitat.

The Grantor may graze or hay portions of the area for habitat management as per the following conditions; however, **grazing and haying treatments shall not occur in the same contract year.**

1. Beginning in year 2 (2022), haying may begin on the DNC grass plantings established in 2020. Up to 50 percent of the acres may be hayed each year, however the same parcel may not be hayed two years in a row. No mowing or haying shall occur until after July 15th of the calendar year. Additional acres will not be hayed under emergency declarations. All available parcels shall be hayed before the rotation begins again.
2. The Grantor may graze the native rangeland area **each year of the contract**. Grazing shall be for a period of 30 days between May 1 and September 30. Grazing rate may be up to one Animal Unit (1 cow/calf pair) per two acres for the 30-day period. Additional acres will not be grazed under emergency declarations. If the cooperators does not wish to graze during the contract period, the native grassland area can be included in the haying rotation as per section a. No haying shall occur during the years in which grazing occurs.