

Prepared by:  
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SD Dept. of Game, Fish & Parks  
523 East Capitol  
Pierre, SD 57501  
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## ACCESS AND UTILITY EASEMENT

This EASEMENT is made and entered into by and between the South Dakota Department of Game, Fish & Parks, 523 E. Capitol Ave., Pierre, SD 57501 (GRANTOR) and James H. Shaeffer, PO Box 296, Montrose, SD 57048 (GRANTEE).

Whereas, GRANTOR owns real property hereafter described upon which GRANTEE desires to obtain a non-exclusive perpetual EASEMENT for a driveway access right-of-way and utilities thereunder or across to provide GRANTEE, his successors in interest or assigns, with access and utility service to GRANTEE'S real property hereinafter described; and

Whereas, GRANTOR is willing to grant said EASEMENT upon a portion of its property pursuant to the terms and conditions contained herein.

NOW, THEREFORE, for the sum of One Dollar (\$1.00) and other good and valuable consideration paid to GRANTOR, receipt of which is hereby acknowledged, GRANTOR and GRANTEE agree as follows:

GRANTOR grants, bargains, and conveys to GRANTEE a non-exclusive perpetual EASEMENT and right to use for the purposes hereinafter provided, a 32 foot wide driveway and utility access right-of-way over, on, under and across real property of GRANTOR described as:

NW1/4NW1/4SW1/4, except that portion of Lot 1 contained therein, of Section 26 in Township 102 North, Range 53 West of the 5<sup>th</sup> P.M., McCook County, SD;

Of which said driveway and utility access right-of-way is more specifically depicted on the attached Exhibit A ("Easement Area");

for the purpose of providing GRANTEE and his successors in interest or assigns with access and utility services to real property of GRANTEE described as:

Lot 1 in the W1/2SW1/4 of Section 26 in Township 102 North, Range 53 West of the 5<sup>th</sup> P.M., McCook County, SD,

which said EASEMENT will provide access and utility services across, over and under the Easement Area of the GRANTOR'S property to the property of the GRANTEE. Said EASEMENT is granted subject to the following terms:

1. The specific location of the 32 foot wide driveway and utility access right-of-way has been located and agreed to by both GRANTEE and GRANTOR. GRANTOR authorizes GRANTEE to construct and maintain a driveway upon and utility services over, under and upon and within the Easement Area located upon GRANTOR'S property as provided herein.
2. The right-of-way created by this EASEMENT shall be utilized by GRANTEE and his successors in interest or assigns solely as a driveway access on and over which vehicles may be driven to obtain ingress to and egress to and from the above described property of GRANTEE and utility services thereunder or upon the Easement Area. Neither GRANTEE nor his successors in interest or assigns shall have any right to use the driveway and utility right-of-way created by this EASEMENT for purposes other than as provided in this Agreement without the prior written permission of the GRANTOR, its successors in interest or assigns.
3. GRANTEE, his successors in interest and assigns, agree to hold harmless and indemnify the State of South Dakota, its officers, agents, and employees, from and against any and all expenses, liabilities, claims, actions, suits, damages, or other proceedings, including reasonable attorney fees, by or on behalf of any person or entity which may arise as the result of the construction, repair, maintenance, and use of the driveway and utility access located within the real property subject to the EASEMENT granted herein.
4. GRANTOR makes no representations or assurances that the property subject to the EASEMENT is fit for the intended use of GRANTEE. It is understood and agreed, and is an explicit condition of the granting of this EASEMENT, that the GRANTOR assumes no road or utility maintenance, construction, or repair responsibilities upon and over this EASEMENT and driveway and utility access right-of-way; rather, that all such maintenance, construction, and repair responsibilities shall be and remain the sole responsibility of the GRANTEE or his successors in interest or assigns.
5. It is understood and agreed that the EASEMENT created by this Agreement shall run with the land and that the terms of this document shall be binding upon and inure to the benefit of the successors in interest or assigns of the parties hereto. This Agreement may not be amended or terminated except by express written agreement of the parties hereto, their successors in interest or assigns.
6. The unenforceability of any provision contained in this Agreement shall not affect or impair the validity of any other provision contained herein. The laws of the State of South Dakota shall govern the validity, performance, and enforcement of the terms and conditions contained in this Agreement. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

IN WITNESS WHEREOF, GRANTOR and GRANTEE have executed this Agreement on the day and year hereinafter acknowledged.

GRANTOR  
SOUTH DAKOTA DEPARTMENT OF  
GAME FISH AND PARKS

GRANTEE

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Anthony P. Leif  
Wildlife Division Director

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James H. Shaeffer

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me the undersigned officer, personally appeared James H. Shaeffer, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF HUGHES )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me the undersigned officer, personally appeared Anthony P. Leif, who acknowledged himself to be the Director of the Wildlife Division, South Dakota Department of Game, Fish and Parks, and that he, in said capacity and being authorized so to do, executed the foregoing instrument for the purposes therein contained.

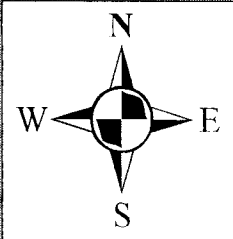
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public, State of South Dakota

My Commission Expires: \_\_\_\_\_

# EXHIBIT A ACCESS EASEMENT



EASEMENT LOCATION

Sec 26  
T102N  
R53W

0 0.05 0.1 Miles