

## WARRANTY EASEMENT DEED

WETLANDS RESERVE PROGRAM  
AGREEMENT NO. 66-6740-7-199

THIS WARRANTY EASEMENT DEED is made by and between Steve Heesch

of Rt. 1, Box 63, Rosholt, South Dakota 57260  
(hereafter referred to as the "Landowner"), Grantor(s), and the UNITED STATES OF AMERICA, by and through the Commodity Credit Corporation (hereafter referred to as the "United States"), Grantee. The Landowner and the United States are jointly referred to as the "Parties."

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 habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values, and environmental education. It is the intent of CCC 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 Title XII of the Food Security Act of 1985, as amended (16 U.S.C. § 3837), for the Wetlands Reserve Program.

NOW THEREFORE, for and in consideration of the sum of Seventy Four Thousand Two Hundred Eighty and 82/100 Dollars (\$ 74,280.82), the Grantor(s), hereby grants and conveys with general warranty of title to the UNITED STATES OF AMERICA and its assigns, the Grantee, for 30 years, all rights, title and interest in 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 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 30 years and shall bind the Landowner, (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, 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 quiet enjoyment of the rights reserved on the easement area.

C. **Control of Access.** The right to prevent trespass and control access by the general public.

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D. Recreational Uses. The right to undeveloped recreational uses, including hunting and fishing, and including leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time.

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.

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

A. Prohibitions. Unless authorized as a compatible use under Part IV, it is expressly understood that the rights to the following activities and uses have been acquired by the United States and are prohibited of the Landowner 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;
3. dumping refuse, wastes, sewage or other debris;
4. harvesting wood 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;
6. diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means;
7. building or placing buildings or structures on the easement area;
8. planting or harvesting any crop; and
9. grazing or allowing livestock on 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 CCC 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.

D. Taxes. The Landowner shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land.

E. Reporting. The Landowner shall report to CCC any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the easement area.

**PART IV. Allowance of Compatible Uses by the Landowner**.

A. General. The United States may authorize, in writing and subject to such terms and conditions CCC may prescribe at its discretion, the 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 such use is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area. CCC shall

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prescribe the amount, method, timing, intensity, and duration of the compatible use.

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

A. **Management activities.** The United States shall have the right to enter unto the easement area to undertake, at its own expense or on a cost share basis with the Landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area. The United States, at its own cost, may apply to or impound additional waters 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.

C. **Easement Management.** The Secretary of Agriculture, by and through CCC may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to any entity authorized by law that CCC 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 or terminate this easement (16 U.S.C. § 3837e(b)) is reserved to CCC in accordance with applicable law.

D. **Violations and Remedies - Enforcement.** The Parties agree that this easement deed may be introduced in any enforcement proceeding 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, successors, 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 Wetlands Reserve 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.

PART VII. Special Provisions (if any).

TO HAVE AND TO HOLD, this Warranty Easement Deed is granted to the United States of America and its successors and assigns for 30 years. 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 11th day of August, 1997.

Landowner(s): ) Steven Head (Seal)  
)  
)  
) \_\_\_\_\_ (Seal)

Acknowledgment

In the State or Commonwealth of South Dakota, County, Borough or Parish of Roberts, on this 11th day of August, 1997 before me, the undersigned, a Notary Public in and for said jurisdiction, personally appeared Steven Heesch

\_\_\_\_\_ to me known to be the person(s) 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 my hand and Notarial Seal subscribed and affixed in said jurisdiction, the day and year above written.

(NOTARIAL SEAL)

Grace Robinson  
Notary Public

My Commission Expires: May 31, 1998

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

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OMB DISCLOSURE STATEMENT

Public reporting burden for this collection of information is approximately (60) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture Clearance Office OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0578-0013), Washington, D.C. 20503.

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CONSERVATION PLAN  
 SCHEDULE OF OPERATIONS

NAME: Herbert & Steven Heesch  
 COUNTY: ROBERTS  
 STATE: | CONTRACT NO. | TOTAL ACRES UNDER CONTRACT: 210.3

| ITEM NO | FIELD  | PLANNED CONSERVATION TREATMENT (RECORD OF DECISIONS)   | EST. AMOUNT (UNITS) | COST BASIS \$ | COST SHARE RATE % | CONTRACT NO. | COMPLETION SCHEDULE AND ESTIMATED COST-SHARE BY YEAR |      |      |      | REF. NO. |      |
|---------|--------|--|---------------------|---------------|-------------------|--------------|--|------|------|------|----------|------|
|         |        |  |                     |               |                   |              | 1998   | 1999 | 2000 | 2001 |          | 2002 |
| 1       | 1a, 1b | Wildlife Tract 4195 WETLAND DEVELOPMENT OR RESTORATION (657) Vegetative Cover<br>Establishment: Prepare a firm seedbed free of competitive vegetation. Avoid chemical seedbed preparation when desirable forbs, grasses, or grasslike species exist. The presence of noxious weeds may make chemical seedbed preparation necessary. Chemicals used must be applied strictly according to label directions and registered uses. Plant seed 1/4" to 3/4" below the soil surface. Seed used will not contain noxious weed seed and will comply with all state seed laws. Seed will be tested for purity and germination within one year prior to use. Seed tags and bills must be turned in to the NRCS office prior to any payment. During the establishment period control excessive amounts of competitive vegetation.<br>Seedbed Preparation - Chemical | 75.0 AC.            | 17.73         | 75AM              | \$           | 997.31   |      |      |      |          |      |
|         | 1b     | Seedbed Preparation - Tillage  | 75.0 AC.            | 7.29          | 75AM              | \$           | 410.06   |      |      |      |          |      |
|         | 1c     | Seedbed preparation - tillage  | 75.0 AC.            | 7.29          | 75AM              | \$           | 410.06   |      |      |      |          |      |
|         | 1d     | Seeding operation - normal   | 75.0 AC.            | 12.00         | 75AM              | \$           | 675.00   |      |      |      |          |      |
|         | 1e     | Big Bluestem   | 120.0 PLS LB        | 7.57          | 75AM              | \$           | 681.30   |      |      |      |          |      |
|         | 1f     | Switchgrass  | 60.0 PLS LB         | 10.35         | 75AM              | \$           | 465.75   |      |      |      |          |      |
|         | 1g     | Indiangrass  | 60.0 PLS LB         | 9.20          | 75AM              | \$           | 414.00   |      |      |      |          |      |

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|-------------------------|---------|---|---------------------|----------------------------|--------------------|--|--|
|                         |         |   |                     | 1998                       | 1999               | 2000   |  |
| Herbert & Steven Heesch | ROBERTS |   |                     | 210.3                      |                    |  |  |
| ITEM NO                 | FIELD   | PLANNED CONSERVATION TREATMENT (RECORD OF DECISIONS)  | EST. AMOUNT (UNITS) | COST BASIS \$              | COST SHARE RATE \$ | COMPLETION SCHEDULE AND ESTIMATED COST-SHARE BY YEAR |  |
| 1h                      |         | Green needlegrass   | 112.5               | 8.05                       | 75AM               | 679.22   |  |
|                         |         | Western wheatgrass  | 180.0               | 4.00                       | 75AM               | 540.00   |  |
| 1j                      |         | Sideoats Grama  | 60.0                | 9.20                       | 75AM               | 414.00   |  |
| 1k                      |         | Weed Control - Chemical   | 75.0                | 9.75                       | 75AM               | 548.44   |  |
| 11                      |         | Weed Control - Mechanical   | 75.0                | 2.92                       | 75AM               | 164.25   |  |
| 2                       | 1a      | Wildlife<br>Tract 4195<br>WETLAND DEVELOPMENT OR<br>RESTORATION (657)<br>Natural Revegetation: The area will be allowed to revegetate naturally.<br>Vegetation on this field provides adequate cover for the Wetland Reserve Program. The vegetation will be maintained for the life of the contract. Weeds will be controlled. Periodic maintenance treatments, such as clipping or burning may help maintain plant vigor and enhance WRP benefits. Consult with NRCS officials before clipping or burning WRP vegetation. | 135.3 ac.           | N/C                        | N/C                | 135.3 ac.  |  |
| 3                       | 1a, 1b  | Wildlife<br>Tract 4195<br>Pasture and hayland management (510)<br>Hayland Management: As an alternative to grazing in any year, mowing can occur once annually between July 15 and September 1 to provide hay, control unwanted brush, and maintain or improve the quality of desirable species.  | 210.3 acre          | N/C                        | N/C                | 210.3 acre   | 210.3 acre<br>210.3 acre<br>210.3 acre |



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 SCHEDULE OF OPERATIONS

| ITEM NO                         | FIELD  | PLANNED CONSERVATION TREATMENT (RECORD OF DECISIONS)  | COUNTY        | STATE | CONTRACT NO. | TOTAL ACRES UNDER CONTRACT |               |                   |  | +REF. NO. |
|---------------------------------|--------|---|---------------|-------|--------------|----------------------------|---------------|-------------------|--|-----------|
|                                 |        |   |               |       |              | EST. AMOUNT (UNITS)        | COST BASIS \$ | COST SHARE RATE % | COMPLETION SCHEDULE AND ESTIMATED COST-SHARE BY YEAR |           |
| NAME<br>Herbert & Steven Heesch |        |   | ROBERTS       |       |              | 210.3                      |               |                   |  |           |
| 4                               | 1a, 1b | Wildlife<br>Tract 4195<br>Proper grazing use (528)<br>The area will not be grazed until the permanent vegetative cover is established. The area may be grazed to maintain or improve the quality of desirable species, and to enhance wildlife habitat when appropriate in the management effort to establish and maintain wetland functions and values. Stocking rates and duration of grazing must be planned by NRCS annually or in a multiyear plan and will ensure that not more than 50 percent, by weight, of the key species will be utilized by livestock during the growing season. (See SD-CPA-15 for planned grazing schedule.) Any grazing that adversely impacts the functions and values of the wetland ecosystem could cause a reduction or elimination of grazing until the functions and values are restored. | 210.3<br>acre | N/C   | N/C          | 210.3<br>acre              | 210.3<br>acre | 210.3<br>acre     |  |           |
| 5                               | 1a, 1b | Wildlife<br>Tract 4195<br>WETLAND DEVELOPMENT OR RESTORATION (657)<br>Noxious Weed Control: Spray and/or clip noxious weeds to  | 210.3<br>ac.  | N/C   | N/C          | 210.3<br>ac.               |               |                   |  |           |

CONSERVATION PLAN  
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| ITEM NO   | FIELD  | PLANNED CONSERVATION TREATMENT (RECORD OF DECISIONS)   | EST. AMOUNT (UNITS) | COST BASIS \$ | COST SHARE RATE % | CONTRACT NO. | COMPLETION SCHEDULE AND ESTIMATED COST-SHARE BY YEAR |      |      |      | REF. NO. |      |
|---|--------|--|---------------------|---------------|-------------------|--------------|--|------|------|------|----------|------|
|   |        |  |                     |               |                   |              | 1998   | 1999 | 2000 | 2001 |          | 2002 |
| effectively control these weeds as needed. All chemicals used on the easement area will be in accordance with all label requirements and restrictions. The presence of water on these areas will limit the selection of chemicals and make their application difficult. |        |  |                     |               |                   |              |  |      |      |      |          |      |
| 6   | 1a, 1b | Wildlife Tract 4195 WETLAND DEVELOPMENT OR RESTORATION (657)   | 210.3 ac.           | N/C           | N/C               | 210.3 ac.    |  |      |      |      |          |      |
| Permitted and Compatible Uses: The following are permitted and compatible uses of the easement area. Some compatible uses require annual or multiyear management plans. These plans must be developed by NRCS and the land user prior to use.                           |        |  |                     |               |                   |              |  |      |      |      |          |      |
| 7   | 1a, 1b | Wildlife Tract 4195 WETLAND DEVELOPMENT OR RESTORATION (657) Supplemental Treatment Practices: The following are practices supplemental to the restoration of the easement area and are not required to restore or protect the area. These practices typically enhance the functions and values of wetlands. | 210.3 ac.           | N/C           | N/C               | 210.3 ac.    |  |      |      |      |          |      |
| <i>RESERVE</i>  |        |  |                     |               |                   |              |  |      |      |      |          |      |
| 8   | 1a, 1b | Wildlife Tract 4195 WETLAND DEVELOPMENT OR RESTORATION (657) Timber Harvest: Noncommercial firewood harvest is allowed.  | 210.3 ac.           | N/C           | N/C               | 210.3 ac.    |  |      |      |      |          |      |

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CONSERVATION PLAN  
 SCHEDULE OF OPERATIONS

| NAME                    | COUNTY  | STATE   | CONTRACT NO.        | TOTAL ACRES UNDER CONTRACT | COMPLETION SCHEDULE AND ESTIMATED COST-SHARE BY YEAR | REF. NO.  |  |
|-------------------------|---------|---|---------------------|----------------------------|--|-----------|--|
| Herbert & Steven Heesch | ROBERTS |   |                     | 210.3                      | 1999   2000   2001   2002                            |           |  |
| ITEM NO                 | FIELD   | CONSERVATION TREATMENT (RECORD OF DECISIONS)  | EST. AMOUNT (UNITS) | COST BASIS \$              | COST SHARE RATE %                                    |           |  |
|                         |         | All other timber management will be in accordance with a plan that will maintain the functions and values of the restored wetland(s) and is approved by NRCS and FWS prior to implementation.   |                     |                            |  |           |  |
| 9                       | 1a, 1b  | Wildlife<br>Tract 4195<br>WETLAND DEVELOPMENT OR RESTORATION (657)<br>Hunting, fishing, and trapping: that conforms to state and federal laws, including tribal laws where appropriate, are allowed. Commercial production and harvest of bait fish are prohibited. | 210.3 ac.           | N/C                        | N/C  | 210.3 ac. |  |
| 10                      | 1a, 1b  | Wildlife<br>Tract 4195<br>WETLAND DEVELOPMENT OR RESTORATION (657)<br>Access Route: An access route will be identified by the landowner to provide USDA personnel or representatives access to perform restoration program duties. (See plan map for location.)     | 210.3 ac.           | N/C                        | N/C  | 210.3 ac. |  |

CONSERVATION PLAN  
 SCHEDULE OF OPERATIONS

The following statements are made in accordance with the Privacy Act of 1974 (5 USC 522a). The authorities for requesting the information to be supplied on this form are: 16 USC 590a-f (Soil and Water Conservation); 16 USC 590h(b) (Agriculture Conservation); 16 USC 590p(b) (Great Plains); 30 USC 236 et seq. (Rural Abandoned Mine Reclamation); 33 USC 1288 et seq. (Rural Clean Water); The Food Security Act of 1985, Public Law 99-198; and the regulations promulgated thereunder. The information requested is necessary for the development and implementation of a conservation, reclamation or water quality plan as the basis for satisfying program eligibility and compliance requirements, and for providing technical assistance and/or cost-sharing under the 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 order of a court, magistrate, or administrative tribunal.

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 STATE: | CONTRACT NO.: | TOTAL ACRES UNDER CONTRACT: 210.3

| ITEM NO | FIELD | PLANNED CONSERVATION TREATMENT (RECORD OF DECISIONS) | EST. AMOUNT (UNITS) | COST BASIS (\$) | COST SHARE RATE (%) | COMPLETION SCHEDULE AND ESTIMATED COST-SHARE BY YEAR | REF. NO. |
|---------|-------|--|---------------------|-----------------|---------------------|--|----------|
|         |       |  |                     |                 |                     | 1998   1999   2000   2001   2002                     |          |
|         |       | Total Cost-Share by Year:                            |                     |                 |                     | \$ 6,399.39  |          |
|         |       | Total Contract Cost-Share:                           |                     | \$ 6,399.39     |                     |  |          |

- NOTES:
- A. All items numbered under "ITEM NO." must be carried out as part of this contract to prevent violation.
  - B. When established, the conservation practices listed as "PLANNED CONSERVATION TREATMENT" must be maintained by the participant at no cost to the government.
  - C. Enter total cost per unit under "COST BASIS" unless the method of cost-share is flat rate. When flat rate, enter the amount per unit to be paid to the participant.
  - D. All cost share rates shown under "COST SHARE RATE %" are based on average cost (AC) with the following exceptions:  
 AA = Actual costs not to exceed average cost  
 FR = Flat rate  
 NC = Non cost-shared  
 AM = Actual cost not to exceed a specified maximum
  - E. Modifications will be referenced by number in the "Ref. No." column.
  - F. By signing, the participant acknowledges receipt of this conservation plan including the SCS-LTP-11 or SCS-LTP-11A and agrees to comply with the terms and condition hereof.

CERTIFICATION OF PARTICIPANT:

SIGNATURE: *Herbert Heesch* | DATE: 11/11/97 | SIGNATURE: | DATE: | SIGNATURE: | DATE:

RELEVANT OFFICIAL SIGNATURES

DISTRICT CONSERVATIONIST: | DATE: | OTHER ADMINISTERING AGENCY: | DATE: | CONSERVATION DISTRICT: | DATE: