

Filed for Record - Turner County SD

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Book 51 of MISCELLANEOUS
Page 754 # of Pages: 5

By Carol J. Viet
Carol J Viet, Register of Deeds 100739

Prepared by:
Dustin W. DeBoer
S.D. Department of Transportation
700 E. Broadway Ave.
Pierre, SD 57501
(605) 773-3262

Fee \$ 24.00

Return To:
RIGHT OF WAY PROGRAM - SD DOT
700 EAST BROADWAY AVENUE
PIERRE SD 57501-2586

WETLAND PERMANENT EASEMENT

Project No. P 00SW(63) PCN No. 065G Parcel No. B
County Turner

Master Talents, LLC of 46374 US Hwy 18, Davis, SD 57021

referred to in this Easement as the "Grantor," whether one or more, for and in consideration of the sum of Six hundred forty five thousand seven hundred ninety two dollars and no/100 (\$ 645,792.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, grants the State of South Dakota, acting by and through its Department of Transportation, of 700 East Broadway Avenue, Pierre, SD 57501, referred to in this Easement as the "SDDOT," the permanent right to install, repair, maintain, and alter land as a wetland area, referred to in this Easement as the "Property," described as:

Lot PE1 in W1/2 E1/2 SE1/4 and E1/2 W1/2 SE1/4 of Section 36 - Township 98 North - Range 52 West of the 5th P.M., Turner County, South Dakota.
Lot PE1 contains 57.66 acres (2,511,869 square feet), more or less.

The Easement area is shown in Exhibit A, attached to and made part of this Easement.

The Grantor will cooperate in the maintenance of the Property as described in the following conditions:

1. Grantor will allow and will not impede the SDDOT's or its authorized representative's right of ingress and egress to and from the Property for the purpose of inspecting, monitoring, and maintaining the Property, in such a way that will not disturb the Grantor's enjoyment of the surrounding property. Ingress and egress will be made over, across, and through the parcel which abuts the Property to the east, legally described as PE1 in the E1/2 E1/2 SE1/4 of Section 36, Township 98 North, Range 52 West of the 5th P.M., Turner County, South Dakota.

Alpha ☒
Paid ☒ Seal ☒
Num ☒ Comp ☒
Margin ☒ Comp ☒
Trans ☒ Micro ☒
Scan ☒ Comp ☒



2. There shall be no construction or placement of additional structures that is inconsistent with purpose of the Property and the Easement. The SDDOT and its authorized representatives shall have the right to construct, reconstruct, and maintain all wetland structures on the Property, including the right to maintain structure outlets at the mean elevations specified.
3. The following shall be prohibited on the Property: filling, draining, excavating, dredging, mining, drilling, or removal of topsoil, loam, peat, sand, gravel, rock, minerals, or other materials; building of additional roads or paths for vehicular or pedestrian travel or any change in topography of the land; removal, destruction, or cutting of trees or plants; spraying with biocides, insecticides, or pesticides; grazing of animals, farming, tilling of soil, or any other agricultural activity. Haying may be allowed after coordination with the SDDOT and as approved and permitted by the United States Army Corps of Engineers. Grantor will be given priority rights to haying the Property if haying becomes necessary.
4. In the event of destruction, deterioration, or obsolescence of fences, roads, or ditches, the SDDOT may replace the same with improvements or structures of similar size, function, capacity, and location.
5. SDDOT management activities are acceptable, which include, but are not limited to, weed control, erosion control, planting native species, amending soils, erecting signs, and minor grading which does not impair the flow or circulation of water.
6. Except as required to perform inspection, monitoring, protection, management work, maintenance and repair of existing fences, roads or ditches on the Property, or as necessary to fulfill the requirements of the enumerated conditions of the Easement, there shall be no operation of all-terrain vehicles or any other type of motorized vehicle on the Property.
7. The SDDOT will fence the mitigation site and will erect and maintain a sign or other appropriate marker in a prominent location on the Property, visible from a public road, bearing information indicating the Property is protected. The wording of the information shall be determined by the SDDOT Environmental Section. The SDDOT shall be responsible for the costs of erecting and maintaining such sign or marker.

The Grantor acknowledges the SDDOT is specifically granted the sole and unrestricted right to utilize the Property in order to perfect and execute the purposes of the SDDOT Statewide Umbrella Wetland Mitigation Bank, referred to in this Easement as the "Bank." The Bank was established pursuant to an agreement entitled "SDDOT Statewide Umbrella Banking Instrument," which was entered into between the SDDOT and the U.S. Army Corps of Engineers as of the last date of signature of the agreement on June 4, 2014. The activities that would use the Bank will include SDDOT highway construction projects

generally subject to the permitting provisions of Section 401/404 of the Clean Water Act (33 U.S.C. §1251 et seq.) and Section 10 of the Rivers and Harbors Act (33 U.S.C. §403 et seq.).

In the event of a breach of the enumerated conditions, or any other conditions which may be provided in law, by Grantor or another party, the SDDOT will notify the Grantor in writing of the breach. The Grantor will have thirty (30) days after receipt of such notice to undertake actions, including complete restoration, that are reasonably calculated to swiftly correct the conditions constituting the breach. If the Grantor fails to take such corrective action within thirty (30) days, or fails to complete the necessary corrective action, the SDDOT may undertake such actions, including legal proceedings, as are necessary to effect such corrective action. The cost of corrections, including the SDDOT's expenses and any other costs provided by law, will be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of the SDDOT, and no omission or delay in acting shall constitute a waiver of any enforcement right. These enforcement rights are in addition to those available under other provisions of law or equity.

This Easement will run with the land and will be binding upon the Grantor's successors and assigns. The terms and conditions of this Easement will be both implicitly and explicitly included in any transfer, conveyance, or encumbrance of the Property. Any instrument of transfer, conveyance, or encumbrance affecting all or part of the Property will set out the terms and conditions of this Easement either by reference to this document or set forth in full text.

The Grantor acknowledges receipt of an identical copy of this Easement.

GRANTOR(S):

MASTER TALENTS, LLC

By: *Debra M. Anderson*

Its: *AGENT*

Date: *2-14-2018*

(Corporate Seal)

~~Very Important!~~
~~Thank you.~~

No Seal on Document

ACKNOWLEDGMENT ON FOLLOWING PAGE

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF So. Dak)
)SS
COUNTY OF Minnehaha)

On this the 14 day of February, 2018, before me James Schwartz, a notary public, personally appeared Delphine M Anderson, who acknowledged himself/herself to be the Member of Master Talents, LLC, a limited liability company, and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.



James Schwartz

Notary Public

My commission expires: 4-2-21

The above and foregoing Easement approved this 26th day of April, 2018.

By: Joel W Hanger
Right of Way Authorized Representative

PLAT OF LOT PE1

in the W1/2 E1/2 SE1/4 and E1/2 W1/2 SE1/4 of Section 36
Township 98 North, Range 52 West of the 5th P.M.

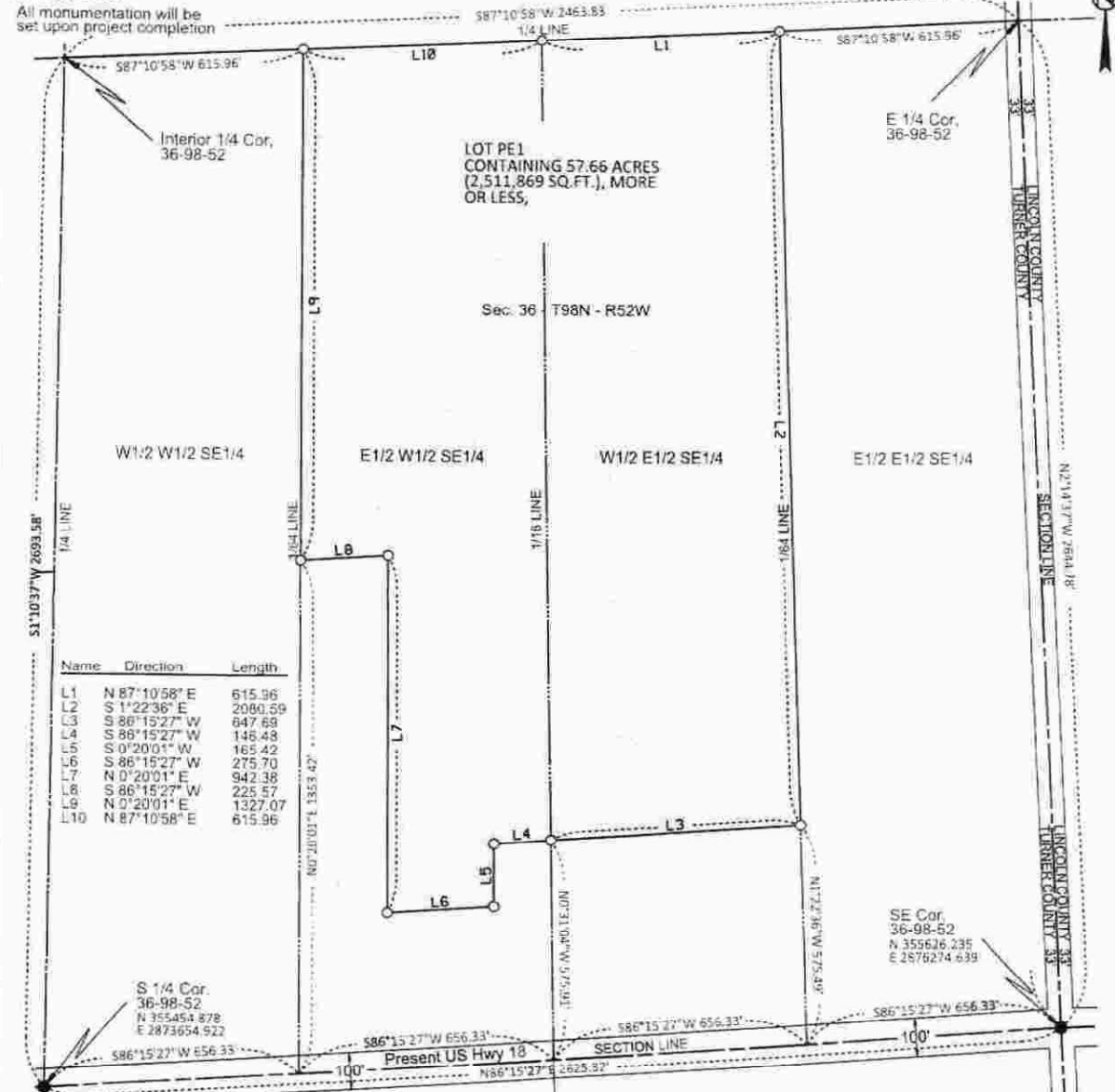
TURNER COUNTY, SOUTH DAKOTA

Showing a permanent easement to be acquired for wetlands
for construction of Project: R 009W(52)

Scale: 1 inch = 300 feet

LEGEND

- [] = existing right of way
 ● = found corner
 (●) = found corner (not used)
 ○ = set corner
 All monumentation will be
 set upon project completion



Note: The coordinates, distances and areas shown on this plat are based on the South Dakota State Plane coordinate System - South Zone NAD 83/07 epoch 2012 Geoid 09 SF = 0.9999677529



16300 E. OLD VILLAGE PLACE
SUITE 109
SIOUX FALLS, SD 57108
PHONE: 605-977-1740, FAX: 605-977-1747

Drawn By B. Jensen Date 12-14-17
Checked By D. Salonen Date 12-14-17

SURVEYOR'S CERTIFICATE

I, BRIAN J. JENSEN, Registered Land Surveyor, in and for the State of South Dakota, do hereby certify that as ordered by the South Dakota Department of Transportation the parcel of land as shown on this plat has been surveyed at my direction and under my control, and such parcel of land shall be hereafter known by the lot number designated herein. The location and dimensions of the parcel are shown on this plat.

In witness whereof, I have set my hand and seal this 14 day of DECEMBER A.D., 20 17.

Registered Land Surveyor
Registration No. 8014



OFFICE OF REGISTER OF DEEDS

State of South Dakota

County of _____ ss

Filed for record this _____ day of _____, A.D., 20 _____ at _____ M., and recorded in Books of Plats _____ on Page _____ therein.

065G

Register of Deeds

by

Deputy

PLAT OF LOT PE1

in the W1/2 E1/2 SE1/4 and E1/2 W1/2 SE1/4 of Section 36,
Township 98 North, Range 52 West of the 5th P.M.

TURNER COUNTY, SOUTH DAKOTA

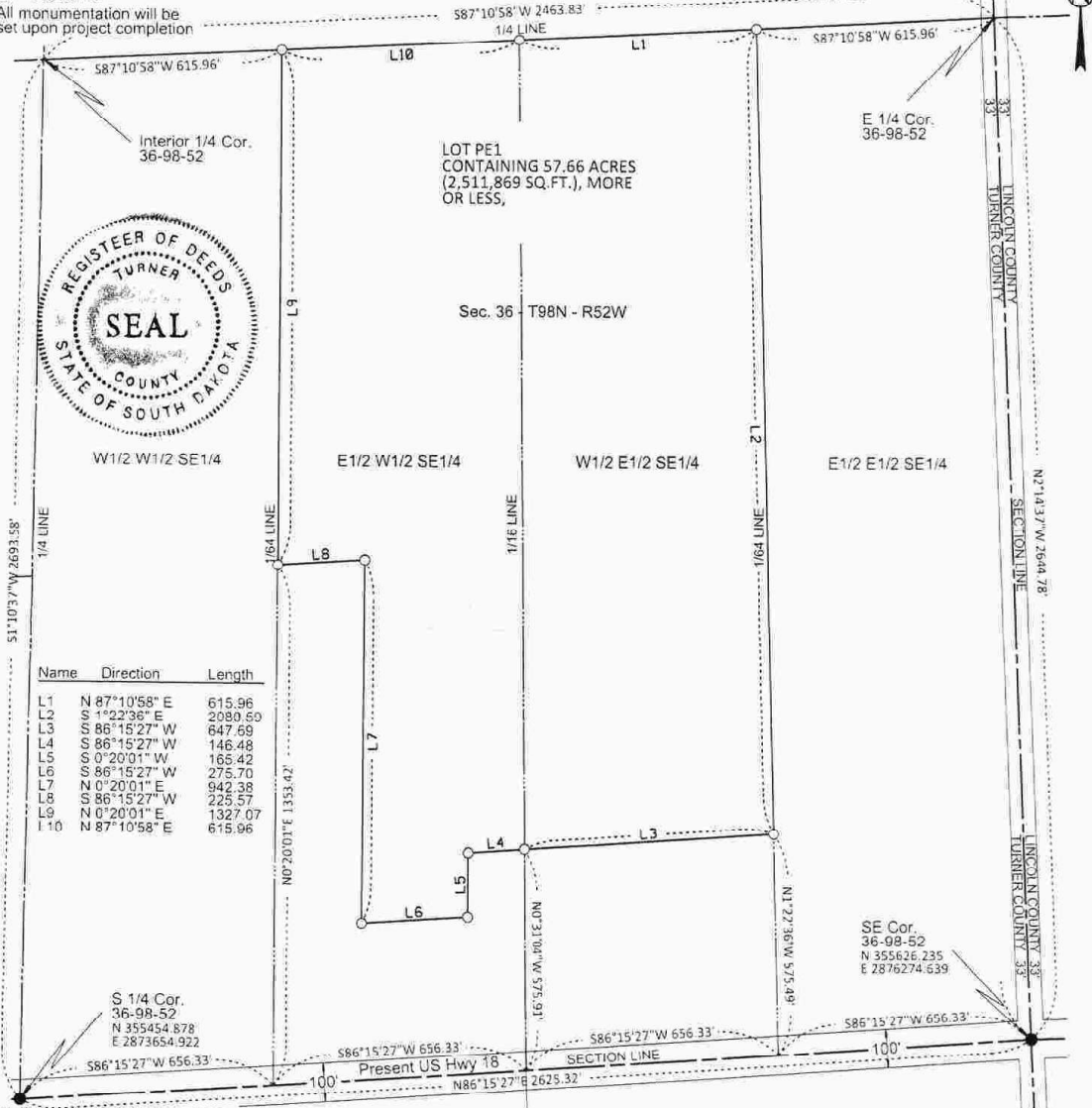
Showing a permanent easement to be acquired for wetland
for construction of Project P 005W(63)

Scale: 1 inch = 300 feet

LEGEND

- = existing right of way
- = found corner
- = found corner (not used)
- = set corner

All monumentation will be
set upon project completion



Note: The coordinates, distances and areas
shown on this plat are based on the South
Dakota State Plane coordinate System -
South Zone NAD 83/07 epoch 2002
Geoid 09 SF = 0.9998677529



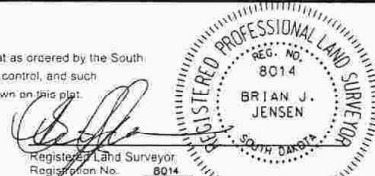
8300 S. OLD VILLAGE PLACE
SUITE 100
SIOUX FALLS, SD 57106
PHONE: 605-577-7740, FAX: 605-577-7747

Drawn By: B. Jensen Date: 12-14-17
Checked By: D. Salonen Date: 12-14-17

SURVEYOR'S CERTIFICATE

I, BRIAN J. JENSEN, Registered Land Surveyor, in and for the State of South Dakota, do hereby certify that as ordered by the South
Dakota Department of Transportation the parcel of land as shown on this plat has been surveyed at my direction and under my control, and such
parcel of land shall be hereafter known by the lot number designated herein. The location and dimensions of the parcel are shown on this plat.

In witness whereof, I have set my hand and seal this 14 day of DECEMBER, A.D., 20 17.



R 082595

OFFICE OF REGISTER OF DEEDS

State of South Dakota

County of Turner ss

Filed for record the 22nd day of February, A.D., 20 18, at 8:30 A.

169 therein;

Carol J. Viet

065G \$20.00 - charged - filed - one page

Highway Plat Book #3

Deputy 99868

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
LAND USE AGREEMENT**

This Land Use Agreement ("Agreement") is entered into by and between the State of South Dakota, acting by and through its Department of Transportation, of 700 East Broadway Avenue, Pierre, SD 57501, referred to in this Agreement as the "STATE;" Master Talents, LLC of 46374 US Highway 18, Davis, SD 57021, referred to in this Agreement as "OWNER;" and Troi Andernacht of 45835 284th Street, Hurley, SD 57036, referred to in this Agreement as the "PERMITEE."

BACKGROUND:

- A. OWNER is the fee owner of certain real property located in Turner County, South Dakota, described as follows:

W1/2 E1/2 SE1/4 and E1/2 W1/2 SE1/2 of Section 36 – Township 98 North – Range 52 West of the 5th P.M., Turner County, South Dakota.

E1/2 E1/2 SE1/4 of Section 36 – Township 98 North – Range 52 West of the 5th P.M., Turner County, South Dakota.

- B. On February 14, 2018, OWNER granted a "Wetland Permanent Easement" to the STATE with regard to each respective property described above and more specifically described as follows, referred to as the "Easement Area" herein:

Lot PE 1 in W1/2 E1/2 SE1/4 and E1/2 W1/2 SE1/4 of Section 36 – Township 98 North – Range 52 West of the 5th P.M., Turner County, South Dakota.

Lot PE 1 in E1/2 E1/2 SE1/4 of Section 36 – Township 98 North – Range 52 West of the 5th P.M., Turner County, South Dakota.

- C. The PERMITEE wishes to conduct temporary farming operations within the Easement Area.
- D. The STATE wishes to allow the PERMITEE to conduct temporary farming operations within the Easement Area.
- E. OWNER acquiesces to the STATE allowing the PERMITEE to conduct temporary farming operations within the Easement Area.
- F. OWNER and the STATE understand this Agreement does not alter or amend the terms and conditions of the "Wetland Permanent Easements" granted by OWNER to the STATE relative to the real property outlined above.

NOW, THEREFORE, in consideration of the mutual benefits and obligations contained in this Land Use Agreement, the parties agree as follows:

1. TERM

The PERMITEE'S permission to use the Easement Area pursuant to this Agreement will conclude on March 31, 2019. This Agreement will not be extended beyond its initial term.

2. PAYMENT

The parties to this Agreement agree no compensation will be paid to the STATE by either OWNER or the PERMITEE for usage of the Easement Area pursuant to this Agreement, and the STATE will not compensate either OWNER or the PERMITEE for usage of the Easement Area pursuant to this Agreement.

3. USE OF EASEMENT AREA

The PERMITTEE will use the described Easement Area for farming operations. PERMITTEE must, either verbally or in writing, relay the nature and the extent of the farming operations within the Easement Area and obtain permission for the farming operations from Kit Bramblee of the South Dakota Department of Transportation, Environmental Office, 700 East Broadway Avenue, Pierre, SD 57501, 605-773-2428, Kit.Bramblee@state.sd.us, prior to commencing farming operations within the Easement Area. The STATE and the PERMITTEE must concur on the nature and extent of the farming operations in an effort to preserve the intended usage of the Easement Areas as a permanent wetland. The PERMITTEE will employ husbandry practices which will in no way depreciate the value of the land which is the subject of this Agreement.

4. CONDITION OF EASEMENT AREA

The PERMITTEE represents and agrees the PERMITTEE has examined the Easement Area, and that the Easement Area is at the time of this Agreement in acceptable condition.

The STATE makes no warranty of fitness for any particular use of the Easement Area.

5. ASSIGNMENT OF AGREEMENT

The PERMITTEE will not transfer or assign this Agreement except upon the STATE'S written consent.

6. IMPROVEMENTS OR ALTERATIONS

The PERMITTEE will make no alterations or improvements to the real property covered by this Agreement without the STATE'S prior written consent.

7. RIGHT OF INGRESS/EGRESS

The STATE, by and through its employees, agents, or contractors employed by the STATE, will have the right of ingress or egress over the real property covered by the Agreement, as long as such ingress or egress does not unreasonably disturb the PERMITTEE'S agricultural activity.

8. MAINTENANCE

The PERMITTEE will, at the PERMITTEE'S own expense, be required to prevent the growth or spreading of noxious weeds in the Easement Area during the term of this Agreement.

9. INSPECTION OF EASEMENT AREA

The STATE and the STATE'S agents will have the right, at all reasonable times during the term of this Agreement to enter the Easement Area for the purpose of inspecting the premises, the preservation of the premises, or to prepare for the development of the Easement Area.

10. ABANDONMENT

If, at any time during the term of this Agreement, PERMITTEE abandons the Easement Area, the STATE may, at the STATE'S option, obtain possession of the Easement Area in the manner provided by law without becoming liable to the PERMITTEE for damages of any kind whatsoever. If the STATE'S right of reentry is exercised following abandonment of the Easement Area by the PERMITTEE, then the STATE may consider any personal property belonging to the PERMITTEE and left on the Easement Area to also have been abandoned, in which case the STATE may dispose of all such personal property in any manner the STATE will deem proper and the STATE is hereby relieved of all liability for doing so.

11. INDEMNIFICATION

The STATE will not be liable for any loss, injury, death, or damage to the PERMITTEE, PERMITTEE'S family, guest, employee, or invitee or property which at any time may be suffered or sustained by the PERMITTEE or by any person.

The PERMITTEE will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings which may arise as the result of this Agreement. This section does not require the PERMITTEE to be responsible for or defend against claims or damages arising solely from errors or omissions of the STATE, its officers, agents, or employees.

12. CONTROLLING LAW PROVISIO

This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. SUPERCESSION PROVISION

All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided in this Agreement, this Agreement constitutes the entire agreement with respect to the subject matter.

14. SEVERABILITY PROVISION

If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision of this Agreement.

15. SURRENDER OF EASEMENT AREA

Upon the expiration of the term of this Agreement, the PERMITTEE will surrender the Easement Area in as good a state and condition as it was at the commencement of this Agreement, excluding any erosion control efforts agreed upon by the parties.

16. DESCRIPTIVE HEADINGS

The descriptive headings used in this Agreement are for convenience of reference only and are not intended to have any effect whatsoever in determining the rights or obligations of the parties hereto.

The parties have caused this Agreement to be executed upon signatures affixed below.

OWNER:

By: *Delphis M. Adams*
Master Talents, LLC

Its: Member

Date: May 31st 2018

[Corporate Seal]

State of South Dakota
Department of Transportation

By: *[Signature]*

Its: Secretary

Date: 6/5/18

Approved as to Form:

[Signature]
Special Assistant Attorney General

PERMITTEE:

By:


Troi Andernacht

Date:

5-30-18

(ACKNOWLEDGMENTS FOLLOW)

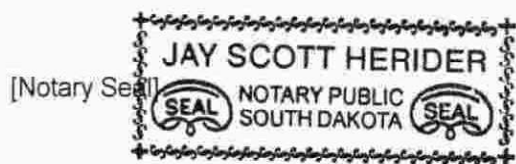


ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA
COUNTY OF MINNEHAHA)
) SS

On this the 31st day of May, 2018, before me Jay Scott Herider a
notary public, personally appeared Delphine M. Andernacht who acknowledged
himself/herself to be the Member of **Master Talents, LLC**, a limited
liability company, and that he/she, as such officer, being authorized so to do, executed the foregoing
instrument for the purposes therein contained, by signing the name of the limited liability company by
himself/herself as such officer.

In witness whereof I hereunto set my hand and official seal.



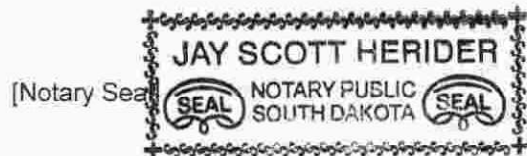

NOTARY PUBLIC
My Commission Expires: 8-17-2022

ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
COUNTY OF TURNER)
) SS

On this the 30th day of May, 2018, before me Jay Scott Herider a
Notary Public, personally appeared **Troi Andernacht**, known to me or satisfactorily proven to be the person
who executed the foregoing document and acknowledged to me that he did sign the foregoing document for
the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



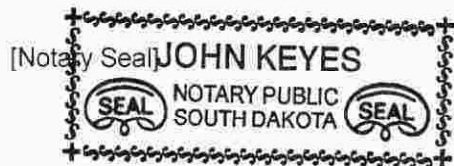

NOTARY PUBLIC
My Commission Expires: 8-17-2022

ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
):SS
COUNTY OF HUGHES)

On this the 5th day of June, 2018, before me, John Keyes, a
Notary Public, personally appeared Darin P. Bergquist, known to me to be the
Secretary of the South Dakota Department of Transportation and
acknowledged to me that he executed the foregoing document as such person and in such capacity therein
stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.



John Keyes
NOTARY PUBLIC
My Commission Expires: June 10, 2022