

**2023 SENATE ENERGY AND NATURAL RESOURCES**

**SB 2228**

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2228  
1/27/2023

A bill relating to permit requirements for pore space storage; relating to amalgamation property interests; and to declare an emergency.
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1:29 PM Chairman Patten opened the meeting.

Present are Chairman Patten and Senators Magrum, Kessel, Boehm, Beard, and Kannianen.

### Discussion Topics:

- Eminent domain
- Just compensation
- Amalgamation
- Landowners' rights

1:29 PM Senator Magrum introduced the bill and provided written testimony #17765.

1:30 PM Troy Coons, Chairman, Northwest Landowners Association, spoke in favor of the bill and offered written testimony that includes a proposed amendment #17766.

1:39 AM Derrik Braaten, Attorney for the Northwest Landowners Association, spoke in favor of the bill.

1:34 PM Kurt Swenson spoke in favor of the bill and provided written testimony #17216.

2:08 PM Warren Woroniecki testified in favor of the bill and provided written testimony #17209.

2:16 PM Casey Voigt testified opposed to the bill and provided written testimony #17299.

2:18 PM Clark Pochant spoke opposed to the bill.

2:21 PM Britta Ensrud appearing and speaking for Stacey Dahl, Minnkota Power Coop, spoke opposed to the bill and written testimony was provided #16679.

2:25 PM Wade Boeshans, Executive Vice President with Summit Carbon Solutions, testified opposed to the bill and provided written testimony #17174.

2:30 PM Adam Dunlop, Ethanol Producers Association, testified opposed to the bill and provided written testimony #17236.

2:34 PM Jason Bohrer, President, Lignite Energy Council, testified opposed to the bill and provided written testimony #17305.



2:37 PM Dave Burns, CCS Regulatory and Compliance Manager for Red Trail Energy, testified opposed to the bill and provided written testimony #17275.

2:49 PM Chairman Patten closed the hearing.

**Additional written testimony:**

Julia Stramer #14896

Rebekah Oliver #15034

Dan and Sue Mclean #15849

Jerry Waswick #16768

Michael Haupt #16957

Bonnie Haupt #16958

Ryan Carter #17135

Linda Maize #17172

Cassie Smith #17173

Joshua Teigen #17178

Jessica Pulver #17239

Jason Pulver #17241

Kathy Sardelli #17245

Charles Doppler #17248

Verda Draeb #17259

Chad Gilmer #17261

Scott Solem #17262

Tyler Mock #17284

Bill Breimeier #17295

Angie Erickson #17315

Simon Geoff #17337

Tammie Somers #17341

David Degenstein #17344

Mark Draeb #17355

Lynn Helms #17363

Doug Sharbono #17372

Ron Ness #17385

Craig Ballensky #17340

Scott Solem #17775

2:49 PM Chairman Patten closed the

meeting. *Rick Schuchard, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2228  
2/10/2023

A bill relating to permit requirements for pore space storage; relating to amalgamation property interests; and to declare an emergency.

10:35 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

### Discussion Topics:

- Committee action

10:35 Senator Magrum discusses amendment LC 23.0391.02001, #20496.

10:41 AM Senator Magrum moves to adopt the amendment LC 23.0391.02001. Motion dies due to a lack of a second.

10:42 AM Senator Magrum moves to adopt amendment language 75% to 70 %. Motion dies due to a lack of a second.

10:52 AM Senator Magrum moves to adopt amendment “remove all strikethrough page 1, lines 15-18, subsection 14 to require eminent domain”.

10:54 AM Motion seconded by Senator Beard.

10:55 AM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	N
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	N

Motion passes 4-2-0.

10:56 Am Senator Magrum moved to Do Pass the bill as amended. Motion is seconded by Senator Beard.

10:56 AM Roll call vote was taken.

<b>Senators</b>	<b>Vote</b>
Senator Dale Patten	N
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	N

Motion passes 4-2-0.

Senator Magrum will carry the bill.

This bill does not affect workforce development.

10:56 AM Chairman Patten closed the meeting.

\*Note the committee action taken today was reconsidered at a later meeting.

*Rick Schuchard, Committee Clerk*

AGx  
2-10-23  
(1-1)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2228

- Page 1, line 15, remove the overstrike over "~~made a good faith effort to get~~"
- Page 1, line 15, remove "obtained"
- Page 1, line 17, remove the overstrike over "~~That the storage operator has obtained the consent of persons who own at least sixty~~"
- Page 1, remove the overstrike over line 18
- Page 1, line 19, remove the overstrike over "6."
- Page 2, line 1, remove the overstrike over "7."
- Page 2, line 1, remove "6."
- Page 2, line 3, remove the overstrike over "8."
- Page 2, line 3, remove "7."
- Page 2, line 4, remove the overstrike over "9."
- Page 2, line 4, remove "8."
- Page 2, line 6, remove the overstrike over "40."
- Page 2, line 6, remove "9."
- Page 2, line 8, remove the overstrike over "41."
- Page 2, line 8, remove "10."
- Page 2, line 9, remove the overstrike over "42."
- Page 2, line 9, remove "11."
- Page 2, line 12, remove the overstrike over "43."
- Page 2, line 12, remove "12."
- Page 2, line 15, remove the overstrike over "44."
- Page 2, line 15, remove the overstrike over "~~That all nonconsenting pore space owners~~"
- Page 2, line 15, after the stricken period insert "have received just compensation under chapter 32-15 and section 16 of article I of the Constitution of North Dakota or the district court has authorized the plaintiff to take possession under section 32-15-29."

Renumber accordingly

# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2228  
2/10/2023

A bill relating to permit requirements for pore space storage; relating to amalgamation property interests; and to declare an emergency
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4:00 PM Chairman Patten opened the meeting.

Chairman Patten and Senators Magrum, Beard, Kannianen, Boehm and Kessel are present.

### Discussion Topics:

- Committee action.

4:00 PM Senator Kannianen moves to reconsider the previous action that was taken on this bill. Motion is seconded by Senator Beard.

4:00 PM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	N
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 5-1-0.

4:14 PM Senator Beard moves to Do Not Pass the bill as amended. Motion is seconded by Senator Kannianen.

4:15 PM Roll call vote is taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	N
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 5-1-0.

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Senator Beard will carry the bill.

This bill does not affect workforce development.

4:15 PM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2228: Energy and Natural Resources Committee (Sen. Patten, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2228 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 15, remove the overstrike over "~~made a good faith effort to get~~"

Page 1, line 15, remove "obtained"

Page 1, line 17, remove the overstrike over "~~That the storage operator has obtained the consent of persons who own at least sixty~~"

Page 1, remove the overstrike over line 18

Page 1, line 19, remove the overstrike over "6."

Page 2, line 1, remove the overstrike over "7:"

Page 2, line 1, remove "6."

Page 2, line 3, remove the overstrike over "8:"

Page 2, line 3, remove "7."

Page 2, line 4, remove the overstrike over "9:"

Page 2, line 4, remove "8."

Page 2, line 6, remove the overstrike over "10:"

Page 2, line 6, remove "9."

Page 2, line 8, remove the overstrike over "11:"

Page 2, line 8, remove "10."

Page 2, line 9, remove the overstrike over "12:"

Page 2, line 9, remove "11."

Page 2, line 12, remove the overstrike over "13:"

Page 2, line 12, remove "12."

Page 2, line 15, remove the overstrike over "14:"

Page 2, line 15, remove the overstrike over "~~That all nonconsenting pore space owners~~"

Page 2, line 15, after the stricken period insert "have received just compensation under chapter 32-15 and section 16 of article I of the Constitution of North Dakota or the district court has authorized the plaintiff to take possession under section 32-15-29."

Re-number accordingly



# 2023 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2228  
02/15/2023

A bill relating to permit requirements for pore space storage; relating to amalgamation property interests; and to declare an emergency.
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3:10 PM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

### Discussion Topics:

- Committee action

3:10 PM Senator Kannianen moved to reconsider the action the committee had taken previously on the bill. Motion seconded by Senator Beard.

3:17 PM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	N
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 5-1-0.

3:17 PM Senator Kannianen moves to remove previously adopted amendments. Motion seconded by Senator Kessel.

3:18 PM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	N
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 5-1-0.

3:18 PM Senator Kannianen moves to Do Not Pass the bill. Motion is seconded by Senator Boehm.

3:19 PM Roll call vote was taken.

<b>Senators</b>	<b>Vote</b>
Senator Dale Patten	Y
Senator Jeffery J. Magrum	N
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 5-1-0.

Senator Beard will carry the bill.

This bill does not affect workforce development.

3:19 PM Chairman Patten closed the meeting.

*Rick Schuchard, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2228: Energy and Natural Resources Committee (Sen. Patten, Chairman)** recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2228 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

**TESTIMONY**

**SB 2228**

## Committee Members

This is in support of **SB 2228**.

Summit Carbon Solutions is planning to cross our cropland with a pipeline that serves no useful purpose for mankind. CO2 is a hazardous material that is dangerously unregulated in a pipeline. Untested with no previous pipeline history to learn from, Summit Carbon Solutions is planning to cross 5 states in order to pipe the CO2 underground in ND. Has ND become the dumping ground for the country? What will the future of ND look like if we allow this to happen? Do we really own our property?

The whole project is a federal money grabbing scheme. It is a make-work "Green Deal" invention for a select group of self serving bureaucrats in order to become billionaires at landowner's expense.

The first easement contract that we received from Summit Carbon Solutions in July of 2021 was an insult regarding compensation and terms. After taxes, my compensation amount figured to be about \$23.00 per year for 99 years. That would not even cover the lawyer fees. We also received a letter from a Summit Carbon Solutions lawyer stating that we would be sued if we did not allow entrance to our property.

While we mind our own business, work our fields, and take care of our land, we are now finding ourselves buried in paperwork and meetings, and paying a lawyer every month.

Our land is a 4th generation owned property. We do not want it to be held hostage for next 99 years. My Grandchildren should have the right use, protect, and improve the land without a toxic pipeline cutting through it.

NDCC 38-22 governing pore space for CO2 sequestration strips away ALL pore space private property rights to exclude, negotiate terms, conditions and price for use of pore space.

Unlike common carriers, there are no special provisions for granting eminent domain of Pore Space and therefore the government can not use Eminent Domain Authority to grant pore space use/access to private developers.

There is sound constitutional law established by US Supreme Court and ND Supreme Court that tell us Pore space is owned by the surface estate landowner, Pore Space is a private property right with limitations in our constitutions on governmental takings, Allowing a Physical Invasion for CO2 disposal operations would qualify as a per se (Physical) taking and is not a Regulatory Taking.

We are asking you to help ND landowners. Please vote **YES** on **SB 2228**.

Thank you for the consideration.

Julia Stramer  
Hazelton, ND

**DO PASS - SB 2228**

Members of the Senate Energy and Natural Resources Committee,

Please render a DO PASS on Senate Bill 2228. Thank you for your consideration of this important bill, and for your service to North Dakota.

Sincerely,

Rebekah Oliver

District 11

**Please note that we are in favor of SB 2209, SB 2212, SB 2228**

We were called and told by Summit Carbon (with no personal names given) that we were going to have a pipeline on our land. When we told them we did not want this on our land, they said fine they would just take it by eminent domain. Period. Even Senator Hoeven feels this should be voluntary.

We bought this land several years ago as a retirement investment. We both had full time jobs off the farm as well as about 100 head of sheep, and then about 100 head of cows. We eventually sold the sheep because they were labor intensive and kept the cows. As you can imagine we did not have a lot of free time. Weekends were spent trying to catch up on all of the work we didn't get done during the working hours on our jobs. But this was OK. We were working to pay off the land for our retirement. As mother nature has her own plan, we sold the cows during the drought. At our age (67 & 68) it was not feasible for us to restock. We were able to completely pay off the land. This gave us to opportunity to rent the pastures to other younger families. Now a private company that stands to make billions of dollars tells us they are taking our land and putting a pipeline on it that will devalue any retirement funds we may have wished for. This does nothing for my neighbors except puts a dangerous element in their backyards. This company states that they are in compliance with PHMSA regulations, but what they would like to do is completely new and regulations are not, as yet, fully adequate.

We are not the only people that do not like this in our neighborhood. Six townships have passed resolutions opposing eminent domain. We are also not the only state that does not want this (see SD, IA, NE).

*In the United States, eminent domain is the power of the government to take away someone's private property. But the Fifth Amendment places two strict limits on eminent domain. First, private property can be taken only for "public use," or public works projects, like roads and bridges. Second, even if a property is taken for a public use, the owner must be paid "just compensation." (Institute for justice.)*

Sue & Dan McLean

Menoken ND



### **North Dakota Senate Bill 2228**

Testimony of Stacey Dahl – Minnkota Power Cooperative

Senate Energy and Natural Resources Committee

February 27, 2023

Chairman Patten and members of the Senate Energy and Natural Resources Committee,

Thank you for the opportunity to testify on SB 2228. I am here on behalf of Minnkota Power Cooperative, a small not-for-profit generation and transmission cooperative that provides wholesale power to 11 member-owned distribution cooperatives, along with several municipal electrics, in North Dakota and northwest Minnesota.

As many of you know, Minnkota is leading Project Tundra – a bold initiative to build one of the world’s largest carbon capture facilities in North Dakota. This facility is being designed to capture an average of 4 million metric tons of CO<sub>2</sub> annually. We plan to store that CO<sub>2</sub> more than one mile underground in deep geologic formations. Backed by more than 20 years of research by the Energy and Environmental Research Center at the University of North Dakota, we know that these formations are ideal for safe, permanent storage. In fact, we are so confident that our portion of the CO<sub>2</sub> storage area is directly beneath our power plant.

If Project Tundra proves to be successful, it will serve as a blueprint for other coal-based facilities in North Dakota and around the world. While the technology advancement that this project represents is exciting, at Minnkota, we are most proud of the outstanding support from the citizens and community of Center, Oliver County, and the state of North Dakota. None of this would be possible without their commitment and vision. By working together, we’ve secured the largest fully-permitted CO<sub>2</sub> storage facility in the U.S. – including 1 of only 3 Class VI storage sites approved by the Environmental Protection Agency. We accomplished this goal with nearly 90% voluntary pore space leases signed. We’ve had numerous in-person meetings with the impacted landowners and remain committed to keeping open lines of communications with them. They are not only landowners, but key stakeholders in the project, as well as neighbors and friends for our more than 50 years of operation near Center.

Currently, we are working on a second CO<sub>2</sub> storage to the west of the power plant. We’ve had positive landowner meetings and individual landowner engagement on this effort that is needed for project redundancy and long-term operation. This bill jeopardizes and would effectively terminate this important part of the project.

SB 2228 virtually ensures no CCS storage projects can move forward with a 100% threshold. One landowner, for whatever reason, can terminate an entire project and the opportunity and right of



landowners who want to participate. The state has carefully and deliberately crafted carbon storage statutes and regulations for over a decade. The 60% threshold now codified is an appropriate threshold that carefully balances interests. It ensures that a supermajority of landowners who wish to participate in the project, do not have their property rights held hostage by a minority. In its current form, SB 2228 serves to take away the value of the property right vested by this legislature in NDCC Chapter 47-31(Pore Space Policy) by nullifying the opportunity for the voluntary supermajority to monetize their pore space interest.

We urge a DO NOT PASS on SB 2228.

SB2228-Opposed

100 percent consent is absurd. Creates undo burden for future projects and State economic growth. Appears to me as a positioning tactic for some land owners to have figured out a way to make millions on this "get rich quick" scheme.

Jerry Waswick

[was@drtel.net](mailto:was@drtel.net)

701-678-2431

Gwinner, ND

Legislative Testimony

Bonnie & Michael Haupt

Private Landowners

Mercer County ND

In Favor of SB2228

Mr. Chairman and members of the committee, we are Michael and Bonnie Haupt private landowners in Mercer County here to testify in favor of SB2228.

Our land is in an area to be included in a CO2 Sequestration project by a for-profit private company and they have asked us to sign their pore space lease. We are not against this new carbon sequestration industry in North Dakota. However, our attorney pointed out several items in the company's lease which led him to recommend that we not sign the lease. We asked the company to negotiate the terms, conditions and consideration listed in the lease, but they would not negotiate. The legislation passed in 2009 created an unlevel playing field with negotiations tipped in favor of the company. We are here today to respectfully ask you to make some changes that will create a level playing field for negotiations.

This same land was crossed by the Dakota Access Pipe Line (DAPL). They were also a for-profit company and were granted the use of eminent domain if we could not come to agreement over the terms, conditions and consideration. We were not against DAPL and their project, we wanted to negotiate with them. So we joined a landowner's group, hired an attorney and negotiated with DAPL our concerns with the terms and conditions of their pipeline easement and the consideration they were offering for the use of our property. DAPL listened to our group's concerns and we believe DAPL was somewhat surprised that our groups concerns turned out to be very reasonable, but necessary. The key was being able to negotiate with DAPL on a more level playing field, with guidance from our attorney. DAPL paid our attorney fees.

Then came the wind farm and requested we signed their easement. No eminent domain hanging over us so we were able to negotiate terms, conditions and

consideration with the guidance of our attorney. We came to an agreement and the wind farm paid for our attorney fees.

Surprisingly to us, a large percentage of our neighbors have signed the for-profit company's pore space lease, without consultation from a competent attorney. It was their choice to sign the lease and we respect that choice. However, our neighbor's signing must not force us to be included in the project. This is not a popular vote, it is our constitutional right to decide if we want to sign a lease or not and our right to decide who may go onto our surface and use it. Our right to negotiate does not conflict with our neighbors right to join, they made their decision. We want to negotiate with the for-profit company on a level playing field, consult with our attorney, and make an informed decision. The legislation created in 2009 tips the negotiating field in the company's favor. They don't need to negotiate with us and the current legislation allows them to take our private property.

We are not against the proposed CO2 sequestration project. We are not against the jobs it will create, the tax income the county and state will receive, or the economic development that may occur. However, a private for-profit company should not be allowed to take our private property without any input or negotiation from us. After all, we own this property! We believe some language in the current legislation is unconstitutional and we respectfully request that you change it so it allows us to negotiate on a level playing field with the for-profit company. We had very successful negotiations with DAPL, and more recently with the wind farm company, both for-profit companies. They also paid our attorney fees.

Any carbon sequestration project proposed for this state by industry, state bureaucrats, our neighbors, the legislature or our Governor, **no matter how meritorious**, is ill conceived if it includes the taking of private property from landowners. Our private property is not for the taking! Please, create a level playing field by passing SB2228. This will encourage the company to negotiate with us and get this industry off to good start! Thank you. Michael and Bonnie Haupt.

Legislative Testimony

Bonnie Haupt

Private Landowner

Mercer County ND

In Favor of SB2228

Mr. Chairman and members of the committee, my name is Bonnie Haupt and I am a private landowner in Mercer County and here to testify in favor of SB2228.

My dad always told us five kids, "Work hard because this is all going to be yours someday...". I worked hard and now own this land with my husband, Michael. It is very concerning that someone can just come and take that land from us without negotiating with us. This is the wrong way to approach such an important project for our state. I ask that you please pass this bill because it is the right thing to do.

Thank you.



**Tharaldson | Ethanol**

Ryan Carter & Brad Kjar  
Co-Chief Operating Officers  
Tharaldson Ethanol  
3549 153rd Ave SE  
Casselton, ND 58012

January 25, 2023

The Honorable Dale Patten  
Chairman  
Senate Energy and Natural Resources Committee  
North Dakota Legislature  
600 E. Boulevard Avenue  
Bismarck, North Dakota 58505

**RE: SB 2251 – OPPOSE**  
**SB 2313 – OPPOSE**  
**SB 2212 – OPPOSE**  
**SB 2209 – OPPOSE**  
**SB 2228 – OPPOSE**  
**SB 2317 – OPPOSE**  
**SB 2314 – OPPOSE**



## Tharaldson | Ethanol

Dear Mr. Chairman and members of the Senate Energy Committee,

Our names are Ryan Carter and Brad Kjar, and we have the privilege of serving as co-Chief Operating Officers for Tharaldson Ethanol in Casselton. As you may know, our facility is the ninth largest ethanol manufacturing facility in the United States and produces a high-octane, clean burning fuel that reduces our nation's dependence on foreign oil, while utilizing our locally grown, renewable agricultural resources. In total, our plant produces 175 million gallons of ethanol every year.

I am writing today to express our opposition to several bills that have been proposed this legislative session, including SB 2251, SB 2313, SB 2212, SB 2209, SB 2228, SB 2317, and SB 2314. These bills, along with others that may be proposed this year, would fundamentally alter North Dakota's regulatory landscape, shift the state away from its traditional pro-business, pro-growth approach to public policy, and prevent North Dakota from continuing to be the national leader in an emerging industry that will benefit our economy long-term.

Tharaldson Ethanol is one of 32 plants across the Midwest that joined Summit Carbon Solutions carbon capture, transportation, and storage project. This multi-billion-dollar private infrastructure investment will allow Tharaldson and Summit's other partners to sell their product at a premium in the growing number of states and countries that have adopted low carbon fuel standards. While opinions may vary on these types of policies, the ability of ethanol manufacturers to access these markets is absolutely vital to ensuring the long-term viability of the industry as a whole. Some renewable fuel leaders in the Midwest have even characterized carbon sequestration as "a matter of life and death" for ethanol manufacturers. We agree.

The ethanol industry contributes \$640 million to North Dakota's GDP every year, supports 10,000 jobs in the state, and, critically, purchases approximately half the corn grown in North Dakota. The stronger the ethanol industry, the better it is for corn growers here in our state and the broader ag economy that is so critical to our way of life. However, the flip side of that coin is true as well. If the industry is not able to access low carbon fuel markets in the years to come, it will undermine the competitiveness of the industry and put all those benefits at risk. And simply put, we believe the bills cited in this testimony would likely produce that outcome.



## Tharaldson | Ethanol

For years, existing businesses in North Dakota and businesses considering investing in the state have enjoyed a predictable regulatory environment and the confidence that the rules would not change in the middle of the game. Summit Carbon Solutions developed a business model based on those rules and rightfully should be able to expect the state won't now, two years later, undertake a complete overhaul of the regulations around infrastructure projects.

With more than 30,000 miles of pipeline already in operation in North Dakota and policymakers across the political spectrum supporting efforts to permanently and safely store carbon dioxide, it's important now more than ever that we maintain the state's regulatory process that is rigorous, comprehensive, and has consistently worked for all stakeholder groups. Despite what some may say, landowners are embracing this project. Hundreds of North Dakota landowners have signed easement agreements with Summit Carbon Solutions, accounting for 85% of the area where the company will safely sequester CO2 and more than 58% of the proposed pipeline route, with many additional landowners currently considering agreements.

Thank you for your consideration on these issues and please don't hesitate to contact me if you have any questions.

Sincerely,

Ryan Carter and Brad Kjar

Co-Chief Operating Officers

Tharaldson Ethanol

3549 153rd Ave SE

Casselton, ND 58012



My name is Linda Maize. I am writing for myself and my family. We live in the southwest corner of Oliver County on land that had a homestead deed. I grew up in Oliver County on my grandfather's homestead. The land and its beauty and value is important to my family and me.

We support the repeal of NDCC 38-22. We worked hard to purchase our land. We value our land and its use. When we received the contract from Carbon Solutions, we read it and took it to our lawyer and financial advisor. Neither one thought we should sign it. We are not opposed to the carbon sequestration but would like to see it done in a different manner. Giving away our surface rights to our property is a huge concern. The contract allows Carbon Solutions to build pipelines, buildings, roads, wells, and other things as they choose whether we want them or not on our land. There is not a provision for upkeep or removal if they stop using it or abandon it. There is no schedule for compensation for these items. They will negotiate it as it comes up. There should be a schedule for payment of buildings, roads, wells, pipelines, etc. on a property before the contract is signed. Having someone tell you that it doesn't really matter if you sign the contract because if you don't, we can take your land rights anyway, is disturbing especially when you live in a rural state that should value the land and individual rights. Our rural state should understand the value of the land and recognize the rights of the property owners to their own land.

We hope you will support the repeal of NDCC 38-22-10

Thank you for your time.

Linda Maize  
5851 28<sup>th</sup> St SW  
Beulah, ND. 58523

Good morning Mr./ Madam Chairman and committee members!

My name is Cassie Smith and my husband and I are in favor of SB 2228. We are landowners in Oliver County and the land we own has been in my husband's family for multiple generations. We have been presented with the same one-sided lease that all our surrounding neighbors have been, regarding carbon capture. This industry would definitely impact our below-ground property. But along with that comes infrastructure on the surface. Along with many of our neighbors, my family is now privileged enough to enjoy the beautiful serenity of a dark, quiet, star-filled night sky and picturesque countryside from our new home that we are closing on this afternoon. If some industry, such as carbon capture, decides they want to corrupt that by taking our land to put an injection well or monitoring well across the road from us right outside our front door, we currently can't do a whole lot about it. As century code currently reads, our private property rights are essentially not ours. Like others, we placed our home in its position for a reason. We believe we have a beautiful view and enjoy watching our livestock, wildlife, and farming activities from the comfort of our (soon-to-be) front deck. For now we settle for our livingroom window. We would hope that someday, at least one of our four children will want to come back and live on the farm and take over. If we are ever forced to look at an ugly pump or deal with the traffic, noise and light pollution that that would bring with it, I couldn't blame the kids if they didn't want to deal with that in their future. I have told my kids multiple times that they can ask to use or borrow their siblings' things, but if the answer is "no" they need to figure out how to deal with that by either offering something in exchange, or moving on to something different. I don't see this scenario any differently than an outside entity asking to use our land, but they need to be able to deal with the possibility of an unwanted answer and be flexible and willing enough to work with the land owner instead of just taking it by force.

Here's another scenario: If a neighboring rancher's cattle crosses the fence and grazes our pasture, could the neighbor tell us that the free fertilizer is our "equitable compensation" for the grazing that we are losing? I know this isn't the case, because as a Deputy Clerk of District Court, I have seen cases where people get in trouble for allowing their cattle to cross fence lines repeatedly. How is this different than some big company coming in and taking our land for their profit and supposedly "equitably" compensating us for it afterward?

I am not saying that we oppose this or any other industry altogether, I'm only saying that we, as landowners, deserve to be able to control what and whom is on or in our land in order to preserve our legacy for future generations.

For these reasons, and many others, we strongly encourage a "DO PASS" vote on SB 2228.

Thank you.

Gary and Cassie Smith, Beulah, ND

**Summit Carbon Solutions Testimony on Senate Bill 2228  
January 27, 2023, 10:00 A.M.  
Senate Energy and Natural Resource Committee  
Senator Dale Patten, Chairman**

**Wade Boeshans – Executive Vice President Summit Carbon Solutions**

**Opposition to SB 2228**

Chairman Patten and members of the committee. My name is Wade Boeshans. I am an Executive Vice President with Summit Carbon Solutions responsible for leading Summits project in North Dakota. I am a fourth generation North Dakotan. I grew up on and now own the land that my great grandfather homesteaded; in what is now the heart of coal country in Mercer County. I worked in the lignite industry for twenty-four years prior to joining Summit Carbon Solutions. I have personal experience with the many benefits of a robust energy and agriculture economy including affordable food, fuel, and the economic prosperity it affords our communities.

Summit Carbon Solutions is developing the world's largest carbon capture and storage project that proposes to capture CO<sub>2</sub> from ethanol plants and industrial facilities across five states, transport the CO<sub>2</sub> to North Dakota where it will be permanently geologically sequestering in Oliver and Mercer Counties. The project will invest over \$900 million in North Dakota to bolster the energy and agricultural industries that are critical to the North Dakota and regional economy.

Proposed climate and energy policies, investor pressures, and societal demands for lower carbon energy have created a low-carbon economy that presents both significant risk and tremendous opportunity to North Dakota. If we do nothing, these pressures threaten North Dakota's traditional energy and modern agriculture that represent seventy percent of our economy. If we take action and deploy solutions like carbon capture, transportation, storage and utilization, we can preserve our industries, spur new investment, and thrive in the low-carbon economy.

Fortunately, North Dakota industry, research, and policy leaders had the foresight over two decades ago to begin investing in research and developing the legal and regulatory frameworks to enable the development and commercialization of carbon capture, transportation, and storage. I've had the privilege of working closely with North Dakota leaders in these efforts for over a decade. As a result, North Dakota is uniquely positioned to thrive in a low-carbon economy with an established legal and regulatory framework, well understood geology, and

commercially available capture technologies. This early action and thoughtful leadership of North Dakotans has produced three operating CCUS projects today and four others under development.

SB 2228 proposes to repeal pore space amalgamation and require consent from all landowners within a CO2 storage area. In Summits project, this means we would need consent from all owners of over one hundred thousand acres. An owner of a single acre could stop a project. This would effectively kill all CO2 storage projects eliminating the ability for industrial facilities to install carbon capture and compete in low-carbon markets. Consequently, shutting down \$Billions of investments, thousands of jobs, stranding North Dakota resources and strangling our economy.

Summit Carbon Solutions has secured pore space agreements with owners of 132,000 acres or over 85% of the land area within our development area. Other permitted CO2 storage facilities have also had high landowner participation. This overwhelming landowner support for projects reflects the professionalism and good faith negotiations of project developers. Yet this bill threatens the property rights of these landowners and their opportunities to develop and monetize the pore space while killing \$Billions in investment and thousands of jobs.

Chairman Patten and members of the committee, Carbon Capture and storage is critical to the future of North Dakotas largest industries and the livelihoods of North Dakotans. As a landowner and leader of North Dakota's largest CCS project, I respectfully ask for your opposition to SB 2228.

Thank you.



Testimony in Opposition of  
**House Bill No. 2228**  
Education and Environment Division of the House  
Appropriations  
January 27, 2023

TESTIMONY OF

**Josh Teigen, Commissioner, ND Department of Commerce**

Mr. Chairman and members of the committee. My name is Josh Teigen and I have the privilege of serving as the Commissioner for the ND Department of Commerce and by statute also the chair of the EmPower ND Commission.

I am here today in opposition of 2228 both as the Commissioner of Commerce and on behalf of the EmPower ND Commission as its chairman. The EmPower ND Commission was formed for the purpose of developing **ND's comprehensive energy policy for the state's diverse and growing energy industry**. The commission is made up of representatives from all the state's energy industries and is a model of how differing interests can come together for the good of an industry. Commerce exists to increase the overall wealth of the state and we do this primarily through the attraction of both capital and talent.

ND prides itself on a being a business-friendly state. A state with a favorable regulatory environment, low taxes, and an approach that innovation trumps regulation. This bill directly flies in the face of the principles that we have used to build our state as a great place to invest and do business.

Both Commerce and EmPower ND believe this bill to be harmful to the future of our economy. There is so much opportunity on the horizon and by enacting policies such as this, we signal to the world that ND is changing course and taking a stance of regulation over innovation. The passage of this bill will cause us to lose critical investments that will contribute to a better quality of life and economic opportunity for all citizens of ND.

Mr. Chairman and members of the committee, on behalf of EmPower ND and the ND Department of Commerce, I strongly urge you to vote no on this bill.

SB 2228 Energy and Natural Resources Committee Testimony (In Favor Of)

Warren Woroniecki , Mercer / Morton County Landowner

Chairman and Committee members my name is Warren Woroniecki. I am from the Hebron area. Our ranch is in the very southwest corner of Mercer County. I ranch alongside my wife, daughter, son in law, and grandson, my parents, brother, and numerous cousins. In addition to our ranch I started a feed business when I was finishing college in 1987. We incorporated the feed business in 1991. We work with cattle producers located throughout all parts of North Dakota and Montana, and some parts of South Dakota.

Our feed businesses main focus was working with the beginning of the ethanol business. We utilized feed by products mainly sourced from AlChem in Grafton, ND. Then continued to work with ethanol plants located all over the Midwest. In the spring of 1998, we partnered with an agribusiness called the Arthur Companies, owned by the Burgum and Peltier Families. Through this partnership we became a powerhouse in marketing all feed by products from the ethanol, brewing, and crushing industries. We continued a successful partnership through the fall of 2010. At that time we decided to split our business to focus on our own core competencies.

We also operate my wife's families ranch by Keene, ND. We work hand in glove in energy development and salt water disposal. We have worked with industry greats like Continental Resources, Halliburton, XTO, Oasis, HESS, Targa, Crestwood, and One Oak, just to name a few.

When working with these companies in their land use needs we take into account the agricultural value of the land, its generational value in equity, and how to maintain these current values. We also take into account the current value of agricultural products and the future value those agriculture products from the land that needs to be idled to utilize the land for oil pads, roads, pumping infrastructure, holding tanks, etc. Those leases and some surface leases are targeted to specific areas.

These leases we hold with the energy companies are not blanket leases that cover all our land area like what the current carbon sequestering business is trying to pull off with a one time payment of \$25 / acre and a future value of \$0.50 per metric ton of carbon when they themselves will receive \$85 / metric ton.

Our leases for land use with energy development are paid yearly for the life of the project. These payments are based on rates comparable to the value the land would have if being leased for agricultural purposes. Eminent domain has never been used on our land for lack of coming up with equitable or just compensation.

Every landowner in town or out in the country should be very concerned about our current law regarding amalgamation and the ability of the Industrial Commission to take it from us without a court of law. Most of us in North Dakota work hard to build equity in land, buildings, business, and houses. When land is taken and used for projects like carbon capture where full surface leases are used, easements will be filed. The full surface is what we need to be in control of to graze our cattle, and plant our crops. Once these full surface easements are filed your land equity is set back close to zero. This results in losing generations of equity. That equity is what we need to borrow money for operating and expanding our businesses.

Every banker should be extremely concerned about the current law and if it were to be used. They should be concerned because in many situations in agricultural land use the banks usually hold all, or the majority of, the surface in collateral. No agricultural land investor will ever be able to get financing to buy land with full surface leases or be able to sell their own land for full agricultural value.

I encourage a Do – Pass on Senate Bill 2228

Respectfully Submitted,

Warren Woroniecki , Hebron ND

## SB2228 Energy and Natural Resources Committee Testimony (In Favor of)

Kurt Swenson, Oliver/Mercer County ND Landowner

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Mr. Chairman and members of the committee, my name is Kurt Swenson, I live in Oliver County with my wife FayE and next door to my mother-in-law Donna. We own land in Oliver and Mercer Counties, some of which has been in my wife's family for over 112 years.

To be clear, we welcome the burgeoning industry of carbon dioxide disposal with the possibilities for enhanced oil recovery in the future, we see the potential benefits to North Dakota's in-state industries, their customers, investors, communities, neighbors, suppliers, and employees. We are not here to oppose a pipeline or the development of our property for CO2 disposal purposes. We are here simply to correct a misdeed the legislature did in 2009 by stripping away constitutionally protected private property rights.

### **One-Sided Lease Agreements**

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The bill before you today came about because of our personal experience with an out of state carbon dioxide disposal facility developer and their one-sided pore space lease agreement. We worked with our neighbors in Oliver, Morton, and Mercer Counties, 3 independent attorneys, and dedicated untold hours with significant dollars to modify the developers' one-sided agreement to be a model agreement that most any North Dakota landowner would sign, submitting it to the developer on January 25<sup>th</sup>, 2022, attached hereto. Despite all our efforts to negotiate, we did not receive any formal written offers to modify their one-sided lease terms and conditions until this bill before you was circulated. You see, with the ability of the developer to use a bureaucratic process to **TAKE** our land without **DUE PROCESS** was being threatened and it brought them to the table on at least one of our issues.

The lease agreements being used by this developer are akin to the early coal leases that still plague Oliver and Mercer County ranchers, farmers and landowners today, unnecessarily burdening their property deeds. They also remind us of the oil and gas leases signed in the early stages of that resource development. No one would ever sign one of these early coal or oil and gas leases today with what we have learned in the last 60 years.

I have yet to find **ONE** North Dakota attorney representing a landowner that has recommended signing the pore space lease as written.

### **Amalgamation is TAKING without DUE PROCESS**

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I learned that in 2009, the legislature adopted a clause in century code that allows the developer to petition the North Dakota Industrial Commission to **TAKE** our constitutionally protected private property and give it to a private developer without our consent **AND** without eminent domain **DUE PROCESS**, thereby stripping away our constitutional rights – this is otherwise known as Amalgamation. By using the HEAVY HAND OF GOVERNMENT to



unconstitutionally **TAKE** up to 40% of non-consenting landowner pore space and authorize a **PHYSICAL INVASION** of our protected private property, we are being put in a second-tier position to negotiate surface use and access, reclamation, risk allocation and compensation.

One may argue that certain CO2 disposal developments meet the required public use threshold of a direct and substantial benefit to North Dakota citizens for eminent domain. If we can't come to an amicable agreement with a developer, current legislation strips the landowner of their right to **DUE PROCESS** of a judicial hearing to determine if the public use threshold is met and a trial with a jury of our peers to set JUST compensation. Unlike the misleading information presented to you on Friday 1/13 by Lynn Helms – the term Equitable Compensation as referenced in current century code is not JUST Compensation - which certainly cannot be determined by the DMR Director, governor, attorney general and ag commissioner who are all charged with promoting industry.

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### Common Law supports SB2228

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We also learned that both the U.S. and North Dakota Supreme courts have validated that pore space landowners constitutionally protected private property rights DO include:

- The right to exclude others from our property, whether temporary or permanent.
- That government granting others the right to **PHYSICALLY INVADE** our pore space is a per-se physical **TAKING** which has strict limitations in our constitutions, AND
- That pore space is and always has been constitutionally protected private property of the surface landowner.

I'm confident that you have heard about that one lone standout landowner who won't negotiate – we ask that you remember one landowners' constitutional rights are equal to the next and my neighbors rights certainly don't include **PHYSICALLY INVADING** my property without my consent and without **DUE PROCESS**.

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### Red Herrings

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You may hear that one of these developers is saving the ethanol industry by their large pipeline bringing in out of state ethanol plant carbon dioxide for disposal. The reality is this pipeline will further drive down the value of Low Carbon Fuel Standard (LCFS) Credits currently trading at only 40% of their value from one year ago by oversupplying these markets with ethanol from 31 plants in Iowa, Nebraska, South Dakota, and Minnesota, thereby hurting our North Dakota ethanol plants that are already pursuing this on their own to penetrate the LCFS markets.

You have also heard that this disposal technology and pipeline will lay the infrastructure to unlock billions of barrels of oil in the future – which it might – and we welcome that. But don't take away our right to monetize our private property in helping unlock those barrels of oil for the right of others to monetize their minerals in a different part of the state. Once our pore space is used, it is irreparably damaged and cannot be used again in the future when markets

may reward a higher value than the Industrial Commission determines in their charter of industry promotion with no charter to protect us as landowners.

Don't let these red herrings convince you to continue the unconstitutional **TAKING** of our private property without **DUE PROCESS**.

### **In Summary**

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This bill before you today restores private property rights we have been granted in our constitutions and affirmed by both US and North Dakota Supreme Court rulings, nothing more. By requiring a higher % of private treaty negotiations such as Minnkota Power's nearly 90% they achieved per testimony and Dakota Gasifications' 96% according to state records, it puts the developer and landowner on a more equal footing in the negotiation and allows for private treaties to prosper less afflicted by governmental interference. We support the right for developers and landowners to collaborate on this new and burgeoning industry of carbon dioxide disposal. We don't support the HEAVY HAND OF GOVERNMENT tipping the scale in favor of the developer and stripping landowners of their rights to negotiate or **TAKING** our property without **DUE PROCESS**.

You can confirm today that the North Dakota legislature stands for private property rights that are protected under the North Dakota and US Constitutions along with supporting Industry. You also have a choice to see this industry move forward without having to waste North Dakota taxpayer money on defending this 2009 legislation in court, as it most certainly will end up there without passing this legislation, thereby delaying the entire industry moving forward in a timely matter.

Help us honor those that came before us who passed this unique legacy and heritage of private property ownership on to us with the hope that we would be able pass it on to our children.

Thank you for your consideration of this bill and I encourage a "DO PASS".

Respectfully submitted,

Kurt Swenson, Beulah, ND

EXCLUSIVE OPTION TO LEASE PORE SPACE

THIS EXCLUSIVE OPTION TO LEASE PORE SPACE (this "Agreement") is made, and entered into this \_\_\_ day, 2021 of \_\_\_, 2022 ("Effective Date"), by and between \_\_\_ husband and wife, as joint tenants, whose address is, Beulah, ND 58523, (whether one or more, "Lessor"), and Summit Carbon Solutions, LLC, an Iowa limited liability company, whose address is, 2321 N. Loop Dr., 1805 Collaboration Place, Suite 221200, Ames, IA 50010 ("Lessee"). Lessor and Lessee may be individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

- A. Lessor is the owner of the surface estate of the lands described and incorporated herein by reference in Exhibit C attached (the "Property").
B. Lessee desires to purchase an exclusive option to acquire a lease of the Property for geologic storage operations Carbon Dioxide Geologic Storage Operations.
C. Lessor is willing to grant convey an exclusive option to Lessee to acquire a lease of the Property for such purposes, subject to the terms and conditions of this Agreement.

DEFINITION

Carbon Dioxide, for the purposes of this Agreement and subsequent Pore Space Lease and any Easements, is defined as 99.9% or higher concentration of carbon dioxide molecules produced from ethanol plant fermentation processes. For the avoidance of doubt, no other substances are permitted to be injected into the pore space.

Carbon Dioxide Geologic Storage Operations, for the purposes of this Agreement and subsequent Pore Space Lease and any Easements is defined as operations necessary for permanent sequestration of Carbon Dioxide. For the avoidance of doubt, operations necessary for removal of Carbon Dioxide for enhanced oil recovery and other purposes, Carbon Dioxide Plume Geothermal electricity production and any other purpose ARE NOT ALLOWED.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and terms set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Grant Conveyance of Option - Memorandum of Pore Space Lease. Lessor, in consideration of TWENTY-FIVE ONE HUNDRED and NO/100 DOLLARS (\$25100.00) per acre (the "Option Fee") and other good and valuable consideration paid by Lessee to Lessor, receipt of which is hereby acknowledged by Lessor, grants a condition precedent to this conveyance,

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~~conveys~~ to Lessee, the exclusive ~~right and~~ option to ~~acquire a lease of the Property for geologic storage operations~~Carbon Dioxide Geologic Storage Operations within the Inyan Kara formation, defined as ~~[insert specific definition]~~ (“Option”). The Option Fee shall be paid to Lessor by Lessee within 5 business days of the Effective Date and prior to Access to Property as described in Section 6. Contemporaneously with the execution of this Agreement, Lessor shall sign the pore space lease attached ~~hereto as Exhibit A and made part hereof~~ (the “Pore Space Lease”); *provided, however*, that the Pore Space lease shall not become effective unless and until Lessee exercises the Option in accordance with Section 3-0. Lessee shall retain the original copy of the Pore Space Lease executed by Lessor and provide Lessor with a copy. In the event Lessee exercises the Option ~~prior to the expiration of the Option Period~~, Lessee shall sign and date the Pore Space Lease effective as of the date Lessee ~~exereised~~exercises the Option and provide a copy of the fully executed Pore Space Lease to Lessor. Lessee shall cause a memorandum of the Pore Space Lease to be recorded in the real property records. ~~The purpose of the memorandum shall be limited to giving notice to the public of the existence of the Pore Space Lease. All references in the memorandum to the Pore Space Lease must be accurate and merely restate terms without characterization or commentary. Under no circumstances may the memorandum contain anything, or be relied on in any way, that is contrary to or inconsistent with the Pore Space Lease. Lessee shall provide Lessor a copy the memorandum Lessee records.~~ In the event Lessee does not exercise the Option prior to expiration of the Option Period, the Pore Space lease shall be cancelled and void.

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2. Option Period. The term of this Option shall commence on the Effective Date and shall continue until 11:59 p.m. central time on the date that is five (5) years from the Effective Date (the “Option Period”).

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3. Exercise of Option. Lessee may exercise this Option by signing the "Exercise of Option" attached as Exhibit B to this Agreement, and delivering a copy to Lessor which is postmarked prior to the expiration of the Option Period atmailed to the address of Lessor stated above. If the Option is exercised, the Parties shall there forthhereafter be bound by the terms and conditions of the Pore Space Lease.

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4. Application of Option Fee. ~~In the event Lessee does not exercise this Option prior to the expiration of the Option Period,~~ Lessor shall retain the Option Fee as consideration for this Option: regardless of whether Lessee exercises the Option.

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5. Representations and Warranties and Covenants by Lessor. Lessor represents that, to the best of its knowledge and belief, ~~and warrants that~~ there are no unrecorded leases, options, or other agreements affecting the Property that have not been provided or otherwise disclosed to Lessee. Lessor shall not enter into any new agreements that affect the pore space without Lessee's written consent. Lessor represents, to the best of its knowledge and belief, and warrants to Lessee that (i) the Property has not been used for generating, transporting, storing, treating or disposing of "hazardous substances" (as that term is defined under applicable federal, state and local laws), (ii) the Property has not been used for disposal of waste or hazardous substances including agricultural chemicals such as fertilizers, herbicides or pesticides, and (iii) no underground storage tanks are presently or have been located on the Property. Lessor shall be responsible for removing any such waste or hazardous substances (including any such agricultural chemicals) at its own cost upon Lessee's exercise of the Option. Lessor further represents and warrants to Lessee that there exists no judgment, suit, action or legal, administrative legally restrict or convey any rights conveyed to Lessee through this Option or Pore Space Lease without Lessee's written consent. Lessor further represents to Lessee that there exists no judgment, suit, action, arbitration or other proceeding affecting the Property or that would prevent or limit Lessor from performing his obligations under this Agreement or the Pore Space Lease. During the Option Period, Lessor agrees to cooperate in good faith in connection with Lessee's Due Diligence Activities, (as defined below) or inspection of the Property. During the Option Period, Lessor shall, ~~subject to casualty and force majeure~~ to the extent reasonably practicable, maintain the existing condition of the Property and not take any action or fail to take any action that ~~results in damage to the Property~~ unreasonably interferes with Lessee's rights hereunder.

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6. Access to Property. Upon execution of this Agreement, Lessor agrees to provide Lessee, its agents and representatives, access to the Property as may be reasonably requested with a minimum of 7 days advance notice to Lessor by Lessee for the purposes of doing those things ~~reasonably convenient or necessary~~ to study, survey, test and plan for the development of its geologic storage operations ~~Carbon Dioxide Geologic Storage Operations~~, including but not limited to: ~~drilling and installing test wells and monitoring wells;~~ performing seismic testing and other similar activities; establishing ground and aerial survey control points and section corners; conducting a feasibility study, which may cover subjects such as soil conditions, geological tests, engineering reports, topographic studies, flood protection, and environmental impact reports, ~~zoning and planning regulations and any other tests and studies the Lessee may elect to perform on the Property~~ (collectively, "Due Diligence Activities"); all at the sole discretion and expense of the Lessee. ~~In the event Lessee~~

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~~constructs and installs any Facilities (as such term is defined in Section 5) In this Agreement Lessor is not authorizing development of the Pore Space Lease) on the Property, Lessee agrees to compensate Lessor Property for the installation Lessee's proposed Carbon Dioxide Geologic Storage Operations, which will require Lessee to sign the "Exercise of any such Facilities in the same manner set forth in Section 5 of the Pore Space Lease Option," attached hereto as Exhibit B. Lessee, and pay the associated consideration as a condition precedent to such development. Due Diligence Activities shall defend, indemnify and hold only be performed between the hours of 7:00 a.m. and 7:00 p.m. Any vehicle traffic will be limited to existing roads and two track trails without separate written permission from Lessor harmless from any costs. Off-road/trail access is to be performed only by foot or light UTV (10 psi or less ground pressure) access. If geophysical exploration activities (similar to those referenced within N.D.A.C. ch. 43-02-12, whether regulated thereby or not) are conducted in or on the Property or any property within 1,000 feet of the Property:~~

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~~expenses incurred in connection with Lessee's access to the Property and its Due Diligence Activities and shall restore the Property to its condition immediately preceding such access.~~

- ~~• Lessee shall conduct pre-construction and postconstruction certified water quality testing for standard nutrients, anions, and other analytes such as inorganic, synthetic, and organic chemicals, and, at Lessor's reasonable request, any other potential contaminants (hereafter "water quality testing"), and water yield, quantity, and/or flow testing (hereafter collectively "water quantity testing") of any water well registered with the North Dakota State Engineer or any other water well within three thousand (3,000) feet of any geophysical exploration activities. Lessee shall also conduct reasonable water quality testing and water quantity testing on any other surface waters such as springs, artesian wells, dugouts, stockponds, reservoirs, and creeks identified by Lessor and located within one thousand (1,000) feet of any geophysical exploration activity. If any water source or resources are damaged by Lessee's activities on or off the Property, Lessee shall analyze any damaged well or water supply system or surface water and perform necessary repairs and/or modifications to return it to its former capacity and quality. If a private well or water supply system or surface water is damaged beyond repair due to Lessee's activities, Lessee shall provide a temporary water source of similar quality and quantity and shall also replace the well or water source with one of equal or greater quality and quantity (and flow rate as applicable). The results of water quality and water quantity testing shall be provided to Lessor free of charge. Lessee will be strictly liable for any damage to groundwater caused by its geophysical exploration activities.~~
- ~~• Seismic shot hole operations shall be conducted at least one thousand eight hundred feet from water wells, artesian wells, buildings, underground cisterns, pipelines, and flowing springs.~~
- ~~• Nonexplosive exploration methods shall be conducted at least nine hundred feet from water wells, artesian wells, buildings, underground cisterns, pipelines, and flowing springs.~~
- ~~• Variances may be granted in writing by Lessor with specific reference to the water wells, artesian wells, buildings, underground cisterns, pipelines, and flowing springs that are the subject of the variance.~~

~~7. INDEMNIFICATION. Lessee shall defend, indemnify, and hold harmless Lessor, its family members, corporate members, shareholders, directors, managers, partners, officers, employees, agents and contractors (the Indemnified Parties) from and against, and shall promptly reimburse each Indemnified Party with respect to any claim, investigation, demand, administrative or court proceeding, or cause of action, including any actual loss, cost, expense, liability, fine, penalty, fee, or damage incurred or suffered by the Indemnified Party (including reasonable fees and expenses of attorneys, technical experts and expert witnesses, court costs and other out-of-pocket expenses) and resulting from Lessee's breach of this Agreement; Lessee's violation of any law, rule, or regulation; Lessee's negligence or willful misconduct; or any act of Lessee causing a loss to Lessor and arising out of or related to Lessee's operations on or near the Property. Neither the coverage nor the limits of insurance required by this Agreement shall in any way restrict the foregoing indemnity obligation.~~

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8. PROPERTY RESTORATION. For any disturbance of the soil by Lessee during any survey operations authorized hereunder and for any unauthorized soil disturbance, Lessee shall restore soil productivity levels within six months of disturbance. Soil productivity levels will be measured with reference to re-vegetation success. Re-vegetation on hay land, pastureland, and native prairie shall be considered successful if the density and cover of non-nuisance, desirable plant species is equal to or greater than adjacent undisturbed portions of the same field. On cropland, re-vegetation shall be considered successful if crop yields are equal to adjacent undisturbed portions of the same field grown under the same conditions. On hay land, the land will be re-vegetated with a local adapted variety of alfalfa at the rate of 5.5 PLS lb./acre, and a cover crop such as oats will be used as necessary to establish the alfalfa on the hay land, or as otherwise agreed to by Lessor. On native prairie and pasture land, the land will be re-vegetated pursuant to the specifications contained in the Exhibit C to the attached Exhibit D (“Easement: Carbon Dioxide Linear”). Lessee will also be responsible for reasonable driveway and farm road maintenance on any roads it uses, and responsible for removing and regrading as necessary all compaction, depressions, imprints and tracks from overland travel and vibroseis truck plates, and weed control for as long as it takes to complete restoration activities. Lessee will be responsible for permanent eradication from the Property of any noxious or nuisance weeds it introduces to the Property and not present prior to its entrance onto the property. Lessee will pay damages for lost or damaged crop yields or damage to hayland production it causes based on lost yield or forage production and price information from local markets.
9. PERFORMANCE AND PAYMENT BONDS. Lessee shall furnish to Lessor security covering the faithful performance of the property restoration requirements contained in Section 8 and other obligations arising under this Agreement, and Lessor’s payment obligations to Lessor, in the form of separate performance and payment bonds, each with a penal sum equal to TWO HUNDRED and NO/100 DOLLARS (\$200.00) per acre covered by this Agreement (Performance and Payment Bonds). The Performance and Payment Bonds must be obtained from a guaranty or surety company authorized to conduct business in North Dakota. Lessor shall deliver the security required by this Section 9 within 5 business days of the Effective Date and shall maintain the security in full force and effect until the end of the Option Period.
10. INSURANCE REQUIREMENTS
- Prior to access on the Property, Lessee shall secure and maintain all insurance required by this Section 10.
  - Lessee shall maintain in effect at all times during the Option Period insurance in accordance with the applicable laws relating to workers’ compensation and employers’ liability insurance, regardless of whether such coverage or insurance is mandatory or merely elective under the law.
  - The failure to secure and provide proof of insurance as required in this Lease shall constitute a material breach of this Agreement entitling Lessor to immediate unilateral termination of this Agreement.
  - Required insurance coverage is to be purchased at Lessee’s expense.
  - Lessee shall notify Lessor of any erosion of aggregate limits under any of the insurance policies, and if requested, purchase additional limits of coverage as may



be deemed by the Lessor to satisfy Lessee’s coverage obligations. Without limiting the foregoing, Lessee will notify Lessor of any claim on the insurance policies, and also when any reservation is placed on the policy limit, or the policy is subject to a claim in litigation.

- All insurance policies required by this Section 10 must include a waiver of the insurer’s right of subrogation against Lessor. Lessee also hereby waives all rights of subrogation against Lessor.
- Lessee shall notify Lessor in writing at least thirty (30) days before cancelling any insurance policies required by this Section 10, or reducing or restricting the limits or coverage of any such policies. Failure to provide this notice shall constitute a material breach of this Agreement entitling Lessor to immediate unilateral termination of this Agreement.
- Lessor will look to Lessee’s insurer for coverage for claims arising from the acts or omissions of Lessee and Lessee’s agents and subcontractors.
- Insurance coverages, with the exception of workers’ compensation and employers’ liability, shall be endorsed to name Lessor as an additional insured with respect to any liabilities assumed under this Agreement; and apply severally and not collectively to each insured against whom claim is made or suit is brought.
- Upon execution of this Agreement and prior to January 1<sup>st</sup> of each year, Lessee shall instruct and require its insurance agent/broker to complete and return an insurance certificate, in an ACORD form, as evidence that insurance policies providing the required coverage, limits and additional insured provisions as outlined in this Section 10 are in full force and effect. Lessee shall be fully responsible for all deductibles and self-insured retentions related to insurance provided herein. The insurance certificate shall be provided to Lessee prior to Access to Property as defined in Section 6.
- Minimum General Requirements.

- \$5,000,000 General Liability
- \$1,000,000 Automobile Liability
- Statutory Workers’ Compensation
- Employers’ Liability - \$1,000,000 each accident; \$1,000,000 disease – policy limit; and \$1,000,000 disease – each employee.
- \$10,000,000 Excess Liability
- \$5,000,000 Pollution Liability

7.11. Permits, Applications and Studies. During the Option Period, Lessee, its agents, affiliates, servants, employees, nominees and licensees shall be entitled to: (A) apply for and obtain any necessary permits, approvals and other governmental authorizations (collectively called “Governmental Authorizations”) required for the development, construction, operation and maintenance of the Lessee’s ~~geologic storage operations~~ Carbon Dioxide Geologic Storage Operations and Lessor agrees to co-operate, execute, obtain, or join with Lessee in any applications or proceedings relating to the Governmental Authorizations upon Lessee’s written request and at Lessee’s reasonable direction, cost and expense; and (B) apply for any approvals and permits ~~and any zoning amendment of any area of the Property~~ required in connection with the Lessee’s ~~geologic storage operations~~ Carbon Dioxide Geologic Storage Operations, and Lessor agrees to co-operate, execute, obtain, or join with Lessee in any

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applications or proceedings relating to such approvals, ~~permits and zoning amendments~~ upon Lessee's written request and at Lessee's ~~direction, cost and expense, and reasonable direction~~. Lessor's cooperation under this section is under the terms and conditions of this Option specifically and Lessor will not make any representations that the Property is leased ~~without first having exercised the Option~~.

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8.12. Entire Agreement. This Agreement, and its exhibits, constitute the entire agreement between the Parties and supersedes any and all previous agreements or understandings between the Parties concerning the subject matter hereof, and all prior agreements are deemed merged herein. ~~No Party makes any representation or warranties to the other Party, unless expressly set forth in this Agreement.~~

9.13. Time of Essence. Time is of the essence to each and every aspect of this Agreement.

10.14. Successors and Assigns. All of the terms and conditions of this Agreement are hereby made binding on the successors and permitted assigns of the respective Parties.

11.15. Headings. The captions used in connection with the ~~articles and~~ sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language of this Agreement.

12.16. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota without giving effect to principles of conflicts of laws. An action to enforce ~~the terms of~~ this Agreement shall be brought in a court of competent jurisdiction located in ~~the state of~~ North Dakota.

13.17. Attorneys' Fees. ~~The Parties~~ Lessee shall be responsible pay for their own attorneys' fees incurred ~~Lessor's attorney's expense~~ in negotiating ~~connection with review and drafting~~ negotiation of this Agreement and any ancillary documents. ~~In~~ within 5 business days of the event that legal action-Effective Date. If Lessor is required to bring a legal action to enforce the terms of this Agreement, ~~the prevailing Party and Lessor prevails~~, Lessee shall be entitled to collect ~~reimburse~~ Lessor for its costs of court, including reasonable attorneys' fees, ~~from the non-prevailing Party~~ expert and consultant fees, court costs, and related expenses.

14.18. Interpretation. ~~The Parties acknowledge that each Party and its counsel have~~ Each Party has reviewed this Agreement with their respective counsel and agree that this Agreement has been fairly negotiated at arm's length. This Agreement shall not be construed against either Party and the principle of contract construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

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15.19. Severability. If any provision(s) of this Agreement are held to be illegal, invalid or unenforceable under present or future laws, such provision(s) shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision(s) had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided that both Parties may still effectively realize the complete benefit of the transaction contemplated hereby.

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16.20. Amendments. No modification or amendment of this Agreement shall be effective unless made in writing and executed by both Lessor and Lessee. In the event any approval or consent is required pursuant to any provision of this Agreement, such approval or consent shall be deemed given only if it is in writing, executed by the party whose approval or consent is required.

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17.21. Authority. Lessor and Lessee each have the right, power, legal capacity and authority to enter into, and no approvals or consents of any other person(s) other than Lessor or Lessee are required in connection with, this Agreement. The execution of this Agreement and consummation of the transactions contemplated hereby will not result in, or constitute, any default or event that with notice or lapse of time, or both, would be, a default, breach or violation of any lease, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust or other agreement, instrument or arrangement to which Lessor or Lessee is a party or by which Lessor or Lessee is bound.

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18. ~~Further Assurances. The Parties hereto agree to execute any and all additional documents or instruments which may be necessary to fully carry out or perform the intended purpose of this Agreement.~~

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19.22. Notice of Option. This Option shall not be recorded in the real property records. Lessor authorizes Lessee to record a Notice of Option to Lease in the real property records that reflects the basic terms of this Agreement and the Option. ~~Lessee shall provide to Lessor a copy of any Notice of Option to Lease it records.~~

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20. ~~Confidentiality. Lessor shall maintain in the strictest confidence, for the benefit of Lessee, all information pertaining to the compensation paid under this Agreement, any information regarding Lessee, its business or operations on the Property or on any other lands, and any other information that is deemed proprietary or that Lessee requests or identifies to be held confidential, in each such case whether disclosed by Lessee or discovered by Lessor.~~

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21.23. Counterparts. This Agreement may be executed in any number of counterparts and when so executed, all such counterparts together shall constitute a single instrument binding upon all parties hereto.

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22.24. Binding Agreement. This Agreement and, if the Option is exercised by Lessee, the attached Pore Space Lease, shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, or assigns.

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23. Electronic Signatures. This Lease, and any amendments hereto, to the extent signed and delivered by means of electronic transmission in portable document format (pdf) or by

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DocuSign or similar electronic signature process, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

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IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

**LESSOR:**

By: \_\_\_\_\_

Print: \_\_\_\_\_

By: \_\_\_\_\_

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**LESSEE:**

SUMMIT CARBON SOLUTIONS, LLC

By: \_\_\_\_\_ Print: ~~Wade Boeshans~~ Its: ~~Executive Vice~~  
~~President~~

By: \_\_\_\_\_ Print: \_\_\_\_\_

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**EXHIBIT A**

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**PORE SPACE LEASE**

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**ATTACHED**

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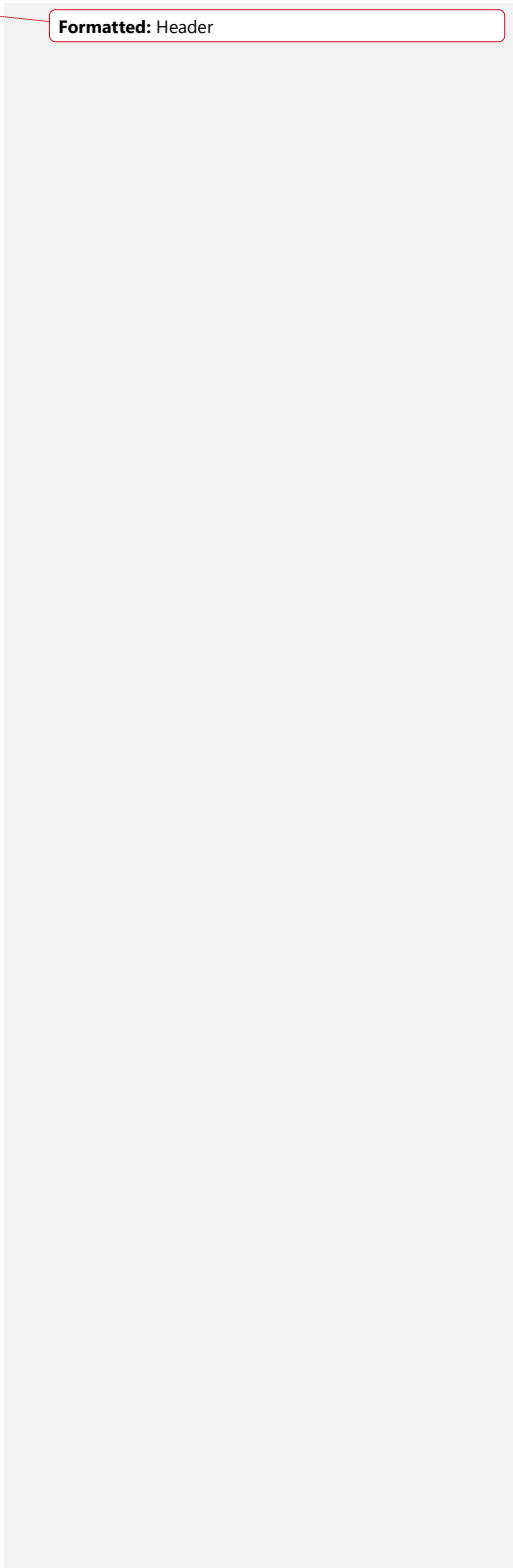
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**PORE SPACE LEASE**

THIS PORE SPACE LEASE (this "Lease") is made effective as of the Effective Date (as defined below) by and between, ~~husband and wife, as joint tenants,~~ whose address is, ~~Beulah, ND 58523,~~ (whether one or more, "Lessor"), and Summit Carbon Solutions, LLC, an Iowa limited liability company, whose address is ~~2321 N. Loop Dr., Suite 221, Ames~~ 1805 COLLABORATION PLACE, SUITE 1200, AMES, IA 50010 (whether one or more, "Lessee"). Lessor and Lessee may be individually referred to herein as a "Party" and collectively as the "Parties".

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**DEFINITION**

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**Carbon Dioxide ("CO2")**, for the purposes of this Pore Space Lease and any Easements, is defined as 99.9% or higher concentration of carbon dioxide molecules produced from ethanol plant fermentation processes. For the avoidance of doubt, no other substances are permitted to be injected into the pore space.

**Carbon Dioxide Geologic Storage Operations**, for the purposes of this Pore Space Lease and any Easements is defined as operations necessary for permanent sequestration of Carbon Dioxide. For the avoidance of doubt, operations necessary for removal of Carbon Dioxide for enhanced oil recovery and other purposes, Carbon Dioxide Plume Geothermal electricity production and any other purpose ARE NOT ALLOWED.

1. **Leased Premises.** Lessor, ~~for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,~~ does hereby ~~grant convey,~~ demise, lease and let unto Lessee for Lessee's ~~geologic storage operations~~ Carbon Dioxide Geologic Storage Operations within the Inyan Kara formation, defined as [insert specific definition] and other purposes set forth herein, the lands described and incorporated herein by reference in Exhibit C attached (the "Leased Premises"). ~~This Lease in no way conveys the right to Lessee for storage or facility developments for any other purpose than Carbon Dioxide sequestration. No facilities constructed as part of this Lease or associated agreements may be constructed, installed, utilized, or converted for any other purpose than Carbon Dioxide sequestration.~~

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2. **Term.**

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(a) **Initial and Primary Term.** This Lease shall commence on the date Lessee executes this Lease ("Effective Date") and continue for an initial term of twenty (20) years ("Initial Term") unless sooner terminated in accordance with the terms of this Lease. As consideration for the Initial Term, Lessee shall pay to Lessor ~~TWENTY FIVETWO HUNDRED and NO/100 DOLLARS (\$25200.00)~~ per acre as a single one-time bonus payment ~~within 5 business days of the Effective Date,~~ and an annual rental of ~~Four Ten and No/100 Dollars (\$410.00)~~ per acre on or before January 1 of each year of the Initial Term. The annual rental shall increase by TWO percent (2.0%) commencing on January 1, 2026 and on January 1 each year thereafter. ~~The first year's rental has been paid in full, the receipt and sufficiency of which is hereby acknowledged by Lessor.~~ Lessee may, at any time prior to the expiration of the Initial Term, elect to extend the Initial Term for up to an additional twenty (20) years by providing written notice to Lessor ~~and payment of One Hundred and No/100 Dollars (\$100.00) per acre~~ (the Initial Term, together with

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all extensions shall be referred to herein as the "Primary Term"). ~~Upon Notice by Lessee to Lessor of the extension of Initial Term, Lessee shall pay Lessor an additional bonus payment within 5 days of said notice in an amount to be negotiated at the time of extension based on current market rates for such purposes, but in no case less than TWO HUNDRED and NO/100 DOLLARS (\$200.00) per acre.~~ For the avoidance of doubt, Lessor's consent to any such extension will not be required ~~provided that the foregoing payment is tendered to Lessor prior to the expiration of the Initial Term.~~ Lessee shall pay to Lessor the annual rentals when due throughout the Primary Term; ~~provided, however, Lessee shall. When the Initial Term ends and is not be liable to Lessor for annual rentals with respect to any portion of extended by the Lessee, and when the Primary Term ends, Lessee may no longer bring CO2 onto the Leased Premises, which are for any purpose and may no longer use the Leased Premises to inject or become subject to Permit as set forth in Section 2(b), below.~~ place CO2 under or into the Leased Premises.

(b) ~~Operational~~ Secondary Term. This Lease shall continue beyond the Primary Term for so long as any portion of the Leased Premises or Lessee's storage facilities located in, on or under the Leased Premises ~~(including without limitation, are utilized for the storage of Carbon Dioxide (the "Secondary Term"). During the Secondary Term, Lessee may not bring CO2 onto the Leased Premises for any Reservoirs) are subject purpose and may not use the Leased Premises to a permit issued by the North Dakota Industrial Commission (the "Commission") (a "Permit") inject or place CO2 under, the ownership or control of the State of North Dakota; provided, however, that all of Lessee's obligations under this Lease shall terminate upon issuance of a certificate of project completion pursuant to Chapter 38-22 of the North Dakota Century Code (into the "Operational Term").~~ Leased Premises. If the Primary Term expires and no portion of the Leased Premises ~~or Lessee's storage facilities located in, on or under the Leased Premises is subject to a Permit~~ has been utilized for storage of Carbon Dioxide, this Lease shall terminate, and Lessee shall execute a document evidencing termination of this Lease in recordable form and shall record it in the official records of the county in which the Leased Premises is located. As necessary and material consideration for the ~~Operational~~ Secondary Term and in addition to the annual rent, Lessee shall pay to Lessor the royalty set forth in Section 3-3, below. The obligations to remove facilities, restore and remediate the property, make annual rental payments under Section 2(a) until restoration is complete, maintain insurance, comply with the law, and indemnify Lessor survive all terms of this Lease and termination of this Lease, and Lessee hereby ratifies and explicitly agrees to comply with these provisions at all times.

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3. Royalty. Lessee shall pay to Lessor ~~its, Lessor's~~ proportionate share of ~~TWENTY-FIVE cents (\$0.25) per metric ton~~~~three-sixteenths (3/16<sup>ths</sup>)~~ of ~~carbon dioxide (CO<sub>2</sub>) injected into the~~ reservoirs and subsurface pore spaces (as used herein, such terms shall have the meanings set forth in Chapter 38-22 and Chapter 47-31 of the North Dakota Century Code), stratum or strata underlying the Leased Premises (collectively, "Reservoirs"), or reservoirs and subsurface pore spaces, stratum or strata unitized or amalgamated therewith. The royalty shall increase TEN percent (10.0%) on January 1, 2026 and an additional TEN percent (10.0%) every five years thereafter, as outlined on attached Exhibit D; *provided, however*, that if at any time Lessee is entitled to and receives a Tax Credit (as defined below) of Eighty-Five and No/100 Dollars (\$85.00) or more per metric ton of carbon dioxide injected into the Reservoirs (the "Qualifying Tax Credit"), then, in the event the current royalty being paid to Lessor is less than FIFTY cents (\$0.50) per metric ton of carbon dioxide injected into the Reservoirs, the royalty paid to Lessor shall automatically increase to FIFTY cents (\$0.50) per metric ton of carbon dioxide injected into the Reservoirs commencing on January 1<sup>st</sup> of the calendar year immediately following the first year in which Lessee is entitled to and receives the Qualifying Tax Credit. For avoidance of doubt, the scheduled TEN percent (10.0%) royalty increases shall continue upon a Qualifying Tax Credit royalty increase. The quantity of CO<sub>2</sub> so injected shall be measured by meters installed by Lessee. ~~Lessee's~~ Gross Profits including any Credits realized by or apportioned to Lessee for use of the subsurface pore space for carbon sequestration and any use permitted by the Pore Space Lease. Gross Profits shall be Lessee's revenues including income from offtake agreements and carbon offset payments plus Credits (or the value of any Credits, whichever is greater), less the cost of capturing, processing, compressing, transporting and sequestering Carbon Dioxide. For the avoidance of doubt, any revenues, income, payments, or Credits sheltered in related party or affiliated companies will be included in the Gross Profit Calculation. In calculating Gross Profits for purposes of payments hereunder, Lessee's General and Administrative Costs such as payroll and payroll taxes, employee benefits (including pensions), sales and marketing expenses, and payments for purchase, rental, use, or other acquisitions of real property rights, will not be used as a debit to Gross Profits or to reduce the calculated Gross Profit or payment hereunder in any way. Credits shall include, but are not limited to, 45Q federal tax credits (26 U.S.C. § 45Q (see IRS Notice 2009-83)), low carbon fuel standard credits, and any other benefits, rebates, subsidies, payments, emissions reductions, offsets, investment tax credits, production tax credits, allowances or other incentives Lessee obtains through sequestration of Carbon Dioxide on the Leased Premises. Subject to Lessor's Right to Audit as defined in Section 32, Lessor's "proportionate share" shall be determined on a net surface acre basis and the Parties hereby stipulate that the acreage set forth in Section 41 shall be used to calculate Lessor's proportionate share. The quantity of ~~carbon dioxide~~Carbon Dioxide injected into the ~~Reservoirs~~Leased Premises or any ~~reservoirs or subsurface pore spaces, stratum or strata unitized or properties~~ amalgamated therewith shall be determined through the use of metering equipment installed and operated by Lessee at ~~the~~each injection site. All royalties due hereunder for ~~carbon dioxide~~Carbon Dioxide injected into the ~~Reservoirs~~Leased premises or any ~~reservoirs or subsurface pore spaces, stratum or strata unitized or properties~~ amalgamated therewith during any calendar month shall be paid to Lessor ~~annually on or before March 31<sup>st</sup> for the prior year's injection volumes. Lessor and Lessee agree that quarterly, and one annual payment to adjust and account for tax credits will be allowed when reasonably necessary. Each measuring station for CO<sub>2</sub> delivered or injected pursuant to this Lease shall continue as specified herein even in the absence of injection operations and the payment of royalties~~be equipped in accordance with at

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least the standards set forth in all applicable chapters of the American Petroleum Institute Manual of Petroleum Measurement Standards. Lessee shall submit to Lessor, at the same time that Royalty is paid, a report identifying the source(s) and quantity of CO2 that has been gathered and injected into the Leased Premises or other pore space amalgamated therewith during the period for which the Royalty is being paid.

Right

4. Rights to Pore Space/Storage for storage of Carbon Dioxide. Lessor grantsconveys to Lessee the exclusive right to inject and store carbon dioxide (CO<sub>2</sub>) and other incidental gaseous substances into the Reservoirs, together with the rightCarbon Dioxide into the Inyan Kara formation [insert specific description based on permit application or other source], and subject to appropriate Easements, the general authority to construct, replace, inspect, repair, monitor, maintain, relocate, change the size of such surface or subsurface facilities on the Leased Premises that Lessee determines necessary or desirable for Lessee's storage operations, including, but not limited to fences, pipelines, tanks, reservoirs, electric and communication lines, roadways, underground facilities and equipment, surface facilities and equipment, buildings, structures and other such facilities and appurtenances. Lessor shall not grant any other person the right to inject or store CO<sub>2</sub> or any other incidental substances.

5.4. Facility Right of Ways/Compensation. Lessor grants Lessee the right of reasonable use of the surface of the Leased Premises, including without limitation, the rights of ingress and egress over the Leased Premises together with the right of way over, under and across the Leased Premises and the right from time to time to construct, replace, inspect, repair, monitor, maintain, relocate, or change the size of such surface or subsurface facilities on the Leased Premises that Lessee determines necessary or desirablebeneficial for Lessee's storage operations, including, but not limited to fences, pipelines, tanks, reservoirs, electric transmission and communication lines, roadways, underground facilities and equipment, surface facilities and equipment, buildings, structures reasonably necessary for the Class VI injection wells, and other such facilities and appurtenances, (each a "Facility" and collectively the "Facilities"); provided, reasonably necessary for operation of the Carbon Dioxide storage reservoir ("Reservoir"). Lessor shall not convey to any other person the right to inject or store any substances in the formation leased herein. The rights referenced in this section are subject to the limitations contained in the remainder of this Lease and cannot be expanded in scope or application by any regulatory approvals or permits.

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~~however, that (i) Lessee shall provide Lessor with notice of operations and an offer of damage, disruption and loss of production payments, as each may be applicable, prior to the installation of any such Facilities on the Leased Premises, and (ii) the agreed up terms, including the amount of damage payments to be paid to Lessor, shall be memorialized in an agreement separate from this Lease, such agreement to be consistent with the grant contained herein. Lessee shall be entitled to proceed with the installation of the Facilities while the separate agreement and amount of damage, disruption or loss is being agreed or determined. Lessee shall have the further right to fence the perimeter of any Facility on the Leased Premises and sufficiently illuminate the site for the safety and security of operations.~~

#### 5. Limitations on use of surface

- (a) Easements. If the surface of the Leased Premises is reasonably necessary for Lessee's Carbon Dioxide Geologic Storage Operations, prior to using the surface, Lessee shall obtain an easement from Lessor. The easement is governed by the following provisions as well as those in the easement document issued by Lessor to Lessee.
- i. For a non-linear facility site, including but not limited to a tank battery, CO2 injection well site, road, or building site, a Facility Easement in substantially the form attached as Exhibit D ("Easement: Carbon Dioxide Surface Facilities") will be executed. For linear facilities, including but not limited to electric and communication lines, fences, or pipelines, a Linear Easement in substantially the form attached as Exhibit E ("Easement: Carbon Dioxide Linear") will be used. If Lessee, in requesting an easement, asks that Exhibits D or E be revised, and if Lessor incurs attorney fees in responding to any such requested change, Lessee shall pay Lessor the reasonable atts Lessor incurs.
  - ii. Prior to submitting a proposed easement to Lessor, Lessee must notify Lessor of Lessee's intent to request an easement and must provide Lessor with a written description of the proposed facility's purpose and location, a general route map or proposed facility map, the estimated payment amount using the Exhibit G, and a reasonable date and time to meet on the Leased Premises with the Lessor to view the proposed location and map. Lessor hereby consents to easements in substantially the forms contained in Exhibit D and Exhibit E as indicated above, but the final location of any such easements requires Lessor's additional consent in writing through the written easement documents, and Lessor may deny any easement based on location if the location will have a negative impact on Lessor's property or operations. Lessor and Lessee shall work in good faith to find mutually acceptable locations for any easements reasonably necessary and requested under this Agreement.
  - iii. For each easement requested, a registered land surveyor hired by Lessee shall prepare a survey that depicts and describes the proposed location of the requested facility. The survey plat for a non-linear facility must describe the facility's location using a metes and bounds survey. The survey plat for a linear facility must describe the facility's location with a metes and bounds centerline survey. The survey plat must be accompanied by a written narrative describing the easement's location, boundary, or centerline description and the number of acres

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and/or rods covered by the easement. The survey plat must depict and the written narrative must include the survey's points of beginning and ending, with those points tied to known, monumented and described government section or quarter corners of the property on which they occur. The survey plat for a linear facility must depict and describe those parts of the easement route subject to no surface disturbance and that require horizontal boring. The survey plat must be attached as Exhibit A to the easement document Lessee presents to Lessee when requesting an easement.

- iv. The easement document (Exhibit D or E), with its survey plat and written narrative attached to it, must be filed by Lessee promptly after its execution by both Lessee and Lessor, but not prior to Lessee's payment of the easement consideration.
- v. The consideration Lessee will pay Lessor for each type of easement is in the attached Exhibit G ("Consideration Schedule for Easements"). Lessee shall pay Lessor the easement consideration immediately upon Lessor's execution of the easement document (Exhibit D or E). The easement consideration and easement annual payment in Exhibit G will increase by two percent (2%) annually beginning on January 1, 2026.
- vi. Prior to constructing a facility authorized by an easement, Lessee shall pay Lessor the consideration owed for the easement and shall record with the County Record the easement document (Exhibit D or E) and its survey plat.
- vii. If prior to or during construction of an authorized easement, Lessee wants to change anything that is in the easement document (Exhibit D or E) or its survey plat, Lessee must first consult with Lessor, meet with Lessor on the Leased Premises to explain the changes, and make good faith efforts to accommodate Lessor's requests regarding the change. If a change makes the easement document or survey plat inaccurate, then a new easement document will be prepared and Lessee shall have a registered land surveyor prepare a new survey plat, which Lessee shall record with the County Recorder.
- viii. If Lessor and Lessee agree to amend the easements they will do so using the Easement Amendment form attached as Exhibit F.
- ix. All easements issued pursuant to this Lease expire upon expiration of this Lease except for obligations to remove facilities, restore and remediate the property, make annual rental payments under Section 2(a) until restoration is complete, maintain insurance, comply with the law, and indemnify Lessor.
- x. All easements are subject to the requirements below in Section 5(b), notwithstanding anything in an easement document (Exhibits D and E) to the contrary.

(b) Environmental, Cultural, Health and Safety Requirements. Lessee must comply with the following for all of Lessee's activities carried out under the Lease:

- i. Lessee shall establish an advanced early warning system using audible, email, text, phone or other devices that immediately notifies Lessor and those designated by Lessor, of any hazardous release of CO2 or other hazardous substances that can cause immediate adverse impacts to the health and welfare of humans, livestock and pets.



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- ii. Lessee will not locate any facilities within one thousand (1,000) of any occupied dwelling, USDW, or human cemetery or graveyard waived in writing by Lessor or the owner of such site. An Underground Source of Drinking Water or "USDW" is defined in Title 40, Code of Federal Regulations (40 CFR), Section 144.3 (2021).
- iii. Lessee agrees that all wooded areas, tree rows, wetlands, sloughs, creeks, springs, rivers, reservoirs, livestock water sources and lakes, or other identified areas reasonably requested in writing by Lessor, must be directionally bored or detoured sufficiently around to avoid destruction or damage, unless waived in writing by Lessor.
- iv. If Lessee's use of roads to carry out any Carbon Dioxide Geologic Storage Operations creates dust that impacts Lessor's occupied dwellings, driveways or occupied pastures and feedlots on the Leased Premises or on any property owned or rented by Lessor adjoining the Leased Premises, Lessee shall incorporate a commercial dust control product into the gravel surface for 1,000 feet each side of the driveways, pastures and feedlots as necessary to alleviate dust impact, unless waived in writing by Lessor.
- v. Lessee agrees that all facilities must be designed so noise does not impact Lessor's quiet use and enjoyment of the Leased Premises and any property owned by Lessor adjoining the Leased Premises. Lessee, at Lessee's expense, shall conduct background noise testing compliance testing while facilities are in operation. The maximum noise at the boundary of any surface facility must be less than 40 dBA while in operation. Lessee must cooperate with reasonable mitigation requests from Lessor and pay for reasonable noise impact mitigation.
- vi. Lessee agrees that all external lighting for facilities shall be shielded and designed to reduce glare. Lessee will not allow direct light to trespass. If Lessor determines that facility lighting is impacting Lessor's use and enjoyment of the Leased Premises and any property owned by Lessor adjoining the Leased Premises, Lessee agrees to mitigate and pay for any reasonable improvements necessary to mitigate the light impacts.
- vii. Lessee agrees that any odors generated by Lessee's operation that are determined by Lessor to be impacting Lessor's use and enjoyment of the Leased Premises and any property owned by Lessor adjoining the Leased Premises must be mitigated to the Lessor's satisfaction at Lessee's expense.
- viii. Lessee agrees that while conducting any construction activities that cause construction traffic to utilize state, county, township, or privately improved roads Lessee agrees to fully return roads to the original preconstruction condition at Lessee's expense.
- ix. Lessee shall have an archeologist with at least three experience doing archeological field work in North Dakota examine the Leased Premises prior to any soil disturbing activities for the purpose of identifying cultural sites, including but not limited to teepee rings, fire pits, and cairns, which Lessee must avoid by directional boring, padding over with construction fabric and fill, or rerouting a minimum of 50 feet beyond the identified site boundary, with the Lessor determining the preferred avoidance measure.
- x. Lessee agrees that soil determined to be contaminated by Lessee's operation(s) must be delineated with soil sampling and lab analysis, and all contaminated soil



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will be collected and hauled to an approved landfill facility at Lessee's expense. The volume of contaminated soil hauled to the approved landfill must be replaced with like or similar soil, be it topsoil or subsoil, with soil acquisition, testing, hauling and reclamation conducted and paid for by Lessee. Replacement soils must be certified seed and weed free or Lessee will be strictly liable for the introduction of any nuisance or noxious weeds to the Leased Premises by the replacement soil. Lessor may consent in writing to an alternative remediation process on request. Lessee will provide copies of all correspondence and filings with administrative agencies and enforcement authorities related to contamination it causes on the Leased Premises. Lessor has the right, with written documentation, to allow the soil to be treated on site under a plan agreed to by Lessor and Lessee. For any areas subject to remediation under this section compensation will be paid for the entire area of remediation until remediation is complete pursuant to the Consideration Schedule for Easements for "Site (well, building, etc.)".

- xi. Lessee shall maintain and comply with an approved Stormwater Pollution and Prevention Plan (SWPPP) for stormwater discharges at any construction sites larger than one acre in accordance with National Pollutant Discharge Elimination System SWPPP standards. Lessee will provide a copy of its plan to Lessor in advance of any soil disturbing activities on the Leased Premises.
- xii. Lessee shall temporarily or permanently fence construction projects, at Lessee's expense, as needed or requested by Lessor in order to prevent livestock access to the construction or constructed area. Lessee may also construct permanent fence in order to keep livestock off of Lessee's facility, with the exception of facilities that are underground and for which the surface has been revegetated to Lessor's satisfaction.
- xiii. If Lessor does not agree to abandonment of any Facilities in place, they must be removed and the soil remediated. Where the soil of the Leased Premises is disturbed by Lessee's activities, whether authorized hereunder or not, Lessee shall restore soil productivity levels. Soil productivity levels will be measured with reference to re-vegetation success. Re-vegetation on hay land, pastureland, and native prairie shall be considered successful if the density and cover of non-nuisance, desirable plant species is equal to or greater than adjacent undisturbed portions of the same field. On cropland, re-vegetation shall be considered successful if crop yields are equal to adjacent undisturbed portions of the same field grown under the same conditions. On hay land, the land will be re-vegetated with a local adapted variety of alfalfa at the rate of 5.5 PLS lb./acre, and a cover crop such as oats will be used as necessary to establish the alfalfa on the hay land, or as otherwise agreed to by Lessor. On native prairie, the land will be re-vegetated pursuant to the specifications contained on Exhibit C to the respective Easement.
- xiv. No structures, pipe, or other facility infrastructure may be abandoned in place unless Lessor agrees in writing to allow such abandonment with an approved procedure.
- xv. Lessee shall furnish to Lessor security covering the faithful performance of facility removal, restoration requirements contained in this section and other obligations arising under this Lease, and Lessees' payment obligations to Lessor

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in the form of separate Performance and Payment Bonds, each with a penal sum equal to an amount as determined by the associated Easement standards and the estimated cost of facility removal and remediation. The Performance and Payment Bonds must remain in place until the facilities are removed and land is remediated. The Performance and Payment Bonds must be obtained from a guaranty or surety company authorized to conduct business in North Dakota. All obligations for restoration and removal explicitly survive early termination of this Lease.

- xvi. Lessee shall retain a competent Third Party Inspector not otherwise employed or contracted by Lessee for any work related to the operations under this Lease, and approved by Lessor, to be present during the construction, remediation and reclamation activities of each Easement project to observe if the terms and conditions of the Easement granted to Lessee are being followed. The Third Party Inspector must submit a written report to the Lessee and Lessor listing in detail the Inspector's assessment of any success, default, failure, neglect, mislocation, or future monitoring necessary in regards to the terms and conditions of the Easement. If future monitoring is necessary, the Third Party will conduct further on-site inspections and report periodically to the Lessee and Lessor. A violation of the terms and conditions of the Easement evidenced by the Third Party Inspector's report must be cured immediately by Lessee.
- xvii. Lessee agrees to fully remediate the Leased Premises where facilities have been installed within 1 year of the end of the Secondary Term or 3 years after Carbon Dioxide is no longer being injected, unless Lessor agrees in writing to allow Lessee to abandon the Facilities in place.
- xviii. If geophysical exploration activities (similar to those referenced within N.D.A.C. ch. 43-02-12, whether regulated thereby or not) are conducted in or on the Leased Premises or any property within 1,000 feet of the Property:
- Lessee shall conduct pre-construction and postconstruction certified water quality testing for standard nutrients, anions, and other analytes such as inorganic, synthetic, and organic chemicals, and, at Lessor's reasonable request, any other potential contaminants (hereafter "water quality testing"), and water yield, quantity, and/or flow testing (hereafter collectively "water quantity testing") of any water well registered with the North Dakota State Engineer or any other water well within three thousand (3,000) feet of any geophysical exploration activities. Lessee shall also conduct reasonable water quality testing and water quantity testing on any other surface waters such as springs, artesian wells, dugouts, stockponds, reservoirs, and creeks identified by Lessor and located within one thousand (1,000) feet of any geophysical exploration activity. If any water source or resources are damaged by Lessee's activities on or off the Property, Lessee shall analyze any damaged well or water supply system or surface water and perform necessary repairs and/or modifications to return it to its former capacity and quality. If a private well or water supply system or surface water is damaged beyond repair due to Lessee's activities, Lessee shall provide a temporary water source of similar quality and quantity and shall also

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replace the well or water source with one of equal or greater quality and quantity (and flow rate as applicable). The results of water quality and water quantity testing shall be provided to Lessor free of charge. Lessee will be strictly liable for any damage to groundwater caused by its geophysical exploration activities.

- Seismic shot hole operations shall be conducted at least one thousand eight hundred feet from water wells, artesian wells, buildings, underground cisterns, pipelines, and flowing springs.
- Nonexplosive exploration methods shall be conducted at least nine hundred feet from water wells, artesian wells, buildings, underground cisterns, pipelines, and flowing springs.
- Variances may be granted in writing by Lessor with specific reference to the water wells, artesian wells, buildings, underground cisterns, pipelines, and flowing springs that are the subject of the variance.

~~6. Amalgamation. Amalgamation. Lessee, in its sole discretion, shall have the right and power, at any time and from time to time during the term of this Lease to pool, unitize, or amalgamate any reservoirs or subsurface pore spaces, stratum or strata underlying the Leased Premises with any other lands or interests into which such reservoirs or subsurface pore spaces extend and document such unit in accordance with applicable law or agency order. Amalgamated units shall be of such shape and dimensions as Lessee may elect and as are approved by the Commission. Amalgamated areas may include, but are not required to include, land upon which injection or extraction wells have been completed or upon which the injection and/or withdrawal of carbon dioxide and/or related gaseous substances has commenced prior to the effective date of amalgamation. In exercising its amalgamation rights under this Lease and if required by law, Lessee shall record or cause to be recorded a copy of the Commission's amalgamation order or other notice thereof in the county in which the amalgamated unit is located. Amalgamating in one or more instances shall, if approved by the Commission, not exhaust the rights of Lessee to amalgamate Reservoirs or portions of Reservoirs into other amalgamation areas, and Lessee shall have the recurring right to revise any amalgamated area formed under this Lease by expansion or contraction or both. Lessee may dissolve any amalgamated area at any time and document such dissolution by recording an instrument in accordance with applicable law or agency order. Lessee shall have the right to negotiate, on behalf of and as agent for Lessor, any unit, amalgamation, storage or operating agreements with respect to amalgamation of reservoir or pore space interests underlying the Leased Premises or the operation of any amalgamated areas formed under such agreements. To the extent any of the terms of such agreements conflict with the terms of this Lease, the terms of such agreements shall control, and the provisions of this Lease shall be deemed modified to conform to the terms, conditions, and provisions of any such agreements which are approved by the Commission.~~

6. Lessee, in its sole discretion, shall have the right and power, at any time and from time to time during the term of this Lease to amalgamate the leased pore space with any other interests which together with the leased pore space form a common reservoir as permitted by the North Dakota Industrial Commission ("NDIC") or other responsible regulatory agency. If such amalgamation is accomplished involuntarily by proceedings before the NDIC, the Lessee will record notice of any order issued by the NDIC along with a copy of the order amalgamating the interests. Notwithstanding the foregoing, any amalgamation of Lessor's pore space voids this Lease if it

~~will reduce or dilute any financial benefit or compensation due to Lessor under this Lease.~~

7. Lessee Obligations. Lessee shall have no obligation, express or implied, to begin, prosecute or continue storage operations in, upon or under the Leased Premises, ~~or store and/or sell or use all or any portion of the gaseous substances stored thereon, other than paying Lessor the minimum annual rental fee as described in Section 2(a).~~ The timing, nature, manner and extent of Lessee's operations, if any, under this Lease shall be at the sole discretion of Lessee. ~~All obligations of Lessee are expressed herein, and there shall be no covenants implied under this Lease, it being agreed that all amounts paid hereunder constitute full and adequate consideration for this Lease.~~

8. Ownership. Lessee shall at all times be the owner of (i) the ~~carbon dioxide and other gaseous substances~~Carbon Dioxide stored in the ~~Reservoirs or pore space utilized for any operations under this Lease ("Reservoir")~~ including any reservoirs or subsurface pore spaces, stratum or strata unitized or amalgamated therewith, and (ii) all equipment, buildings, structures, facilities and other property constructed or installed by Lessee on the Leased Premises. Lessee shall have the right,

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8. ~~but not the obligation,~~ at any time during this Lease to remove all or any portion of the property or fixtures placed by Lessee on the Lease Premises. ~~Notwithstanding the foregoing, title to the storage facility and to the stored carbon dioxide or other gaseous substances shall be transferred to the State of North Dakota upon issuance of a certificate of project completion by the Commission in accordance with Chapter 38-22 of the North Dakota Century Code.~~

9. ~~Minerals, Coal, Oil and Gas.~~ This Lease ~~isdoes~~ not ~~intended to grant or convey, nor does it grant or convey,~~ any right to or obligation for Lessee to explore for or produce minerals, including ~~coal,~~ oil and gas, that may exist on or under the Leased Premises.

10. ~~Surrender of Leased Premises.~~ Lessee shall have the right, but not the obligation, at any time from time to time to execute and deliver to Lessor a surrender and/or release covering all or any part of the Leased Premises for which the Reservoirs are not being utilized for storage as set forth herein, and upon delivery of such surrender and/or release to Lessor this Lease shall terminate as to such lands, and Lessee shall be released from all further obligations and duties as to the lands so surrendered and/or released, including, without limitation, any obligation to make payments provided for herein, except obligations accrued as of the date of the surrender and/or release. Lessee shall be able to surrender the any and or all of the Leased Premises if not utilizing the Reservoirs located thereunder.

10. ~~Water, Gravel, and Scoria.~~ This Lease does not grant or convey any right to Lessee for use or title to any source of water, gravel, or scoria. Nothing in this lease limits Lessor's rights to mine for gravel or scoria or develop water resources except if doing so would unreasonably interfere with existing or planned surface facilities authorized by this Lease.

11. ~~Hold Harmless and Indemnification.~~ The Lessee agrees to defend, indemnify, and hold harmless Lessor from any ~~damages to the property or person or to claims~~ by any person that are a direct result of the Lessee's use of the Leased Premises or ~~Reservoirs~~the Reservoir. Notwithstanding the foregoing, such indemnity/hold harmless obligation excludes (i) any claim or cause of action, or alleged or threatened claim or cause of action, damage, judgment, interest, penalty or other loss arising ~~or resulting entirely~~ from the negligence or intentional acts of Lessor or Lessor's agents, invitees, or licensees; or third parties, and (ii) ~~any claim for exemplary, punitive, special or consequential damages claimed by Lessor.~~ Lessee further accepts liability and indemnifies Lessor for reasonable costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided above. The legal defense provided by Lessee to the Lessor under this paragraph must be free of any conflicts of interest even if this requires Lessee to retain separate legal counsel for Lessor. Lessee agrees to defend, indemnify and hold harmless Lessor, its family members, members, shareholders, directors, managers, partners, officers, employees, agents and contractors (the Indemnified Parties) from and against, and shall promptly reimburse each Indemnified Party with respect to any claim, investigation, demand, administrative or court proceeding, or cause of action, including any actual loss, cost, expense, liability, fine, penalty, fee, or damage incurred or suffered by the Indemnified Party (including reasonable fees and expenses of attorneys, technical experts and expert witnesses, court costs and other out-of-pocket expenses) and resulting from Lessees' breach of this Lease, Lessees' violation of any law, rule or regulation, Lessees' negligence or willful misconduct, or any act of Lessee causing a loss to Lessor and arising out of or related to Lessee's operations on the Property. Neither the coverage nor the limits of insurance required by this Lease shall in any way restrict the foregoing indemnity obligation.

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~~12. Hazardous Substances. Lessee shall have no liability for any regulated hazardous substances located on the Leased Premises prior to the Effective Date or placed in, on or about the Leased Premises by Lessor or any third party on or after the Effective Date, and nothing in this Lease shall be construed to impose upon Lessee any obligation for the removal of such regulated hazardous substances. As used herein, "hazardous substances" shall have the meaning set forth in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and any amendments thereto, or any other local, state or federal statutes.~~

~~13. Termination. A material violation or default of any terms of this Lease by Lessee shall be grounds for termination of the Lease. Lessor shall give Lessee written notice of violation or default and Lessee shall have sixty (60) days after receipt of said notice to substantially cure such violations or defaults. If Lessee fails to substantially cure such violations or defaults within the 60-day cure period, Lessor may terminate the Lease; provided that if it is not possible to cure such violations or defaults within the 60 day cure period, Lessee shall have a reasonable longer period of time to cure such violations or defaults provided it commences cure within the initial 60 day~~

~~cure period and thereafter diligently pursues such cure. Lessee may terminate the lease with thirty (30) days written notice to Lessor. Upon termination of this Lease, Lessee shall have one hundred eighty (180) days to remove all facilities and property of Lessee located on the Leased Premises. For the avoidance of doubt, Lessee shall not be required to remove any CO<sub>2</sub> or other incidental gaseous substances injected into the Reservoirs.~~

~~14.12. Taxes.~~ Lessee shall pay all taxes, if any, levied against its personal property or on its ~~improvements to trade fixtures upon~~ the Leased Premises. Lessor shall pay for all real estate taxes and other assessments levied upon the Leased Premises; ~~except that~~ Lessee shall ~~have the right to pay all for any portion of or increase in real estate taxes, assessments and other fees directly attributable to its trade fixtures or its operations on behalf of Lessor and to deduct the amount so paid from other payments due to Lessor hereunder.~~ ~~the Leased Premises.~~

### 13. Insurance Requirements.

- ~~(a) Prior to accessing the Leased Premises, Lessee shall secure and maintain all insurance required by this Section 13 of this Lease.~~
- ~~(b) The failure to secure and provide proof of insurance as required in this Lease shall constitute a material breach of this Lease entitling Lessor to immediate unilateral termination of this Lease.~~
- ~~(c) Lessee shall maintain in effect at all times during the term of this Lease, insurance in accordance with the applicable laws relating to workers' compensation and employers' liability insurance, regardless of whether such coverage or insurance is mandatory or merely elective under the law.~~
- ~~(d) Required insurance coverage is to be purchased at Lessee's expense.~~
- ~~(e) Lessee shall notify Lessor of any erosion of aggregate limits under any of the insurance policies, and if requested, purchase additional limits of coverage as may be deemed by the Lessor to satisfy Lessee's coverage obligations. Without limiting the foregoing, Lessee will notify Lessor of any claim on the insurance policies, and also when any reservation is placed on the policy limit, or the policy is subject to a claim in litigation.~~
- ~~(f) All insurance policies required by this Section 13 must include a waiver of the insurer's right of subrogation against Lessor. Lessee also hereby waives all rights of subrogation against Lessor.~~
- ~~(g) Lessee shall notify Lessor in writing at least thirty (30) days before cancelling any insurance policies required by this Section 13, or reducing or restricting the limits or coverage of any such policies. Failure to provide this notice shall constitute a material breach of this Lease entitling Lessor to immediate unilateral termination of this Lease. Lessor will look to Lessee's insurer for coverage for claims arising from the acts or omissions of Lessee's agents and subcontractors.~~
- ~~(h) Lessor will look to Lessee's insurer for coverage for claims arising from the acts or omissions of Lessee and Lessee's agents and subcontractors.~~
- ~~(i) Insurance coverages, with the exception of workers' compensation and employers' liability shall be endorsed to name Lessor as an additional insured with respect to any liabilities assumed under this Lease; and apply severally and not collectively to each insured against whom claim is made or suit is brought.~~
- ~~(j) Upon execution of this Lease and prior to January 1<sup>st</sup> of each year, Lessee shall instruct and require its insurance agent/broker to complete and return an insurance certificate to~~

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Lessor, in an ACORD form, as evidence that insurance policies providing the required coverage, limits and additional insured provisions as outlined in this Section 13 are in full force and effect. Lessee shall be fully responsible for all deductibles and self-insured retentions related to insurance provided herein.

(k) Minimum General Requirements.

- \$5,000,000 General Liability
- \$1,000,000 Automobile Liability
- Statutory Workers' Compensation
- Employers' Liability - \$1,000,000 each accident; \$1,000,000 disease – policy limit; and \$1,000,000 disease – each employee.
- \$10,000,000 Excess Liability
- \$20,000,000 Pollution Liability

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15.14. Conduct of Operations. In conducting its operations hereunder, Lessee shall use its best efforts to comply with all applicable laws, rules and regulations and ordinances pertaining thereto to those operations, Lessee reserves and shall have the right to challenge and/or appeal any law, ruling, regulation, order, or other determination and to carry on its operations in accordance with Lessee's reasonable, good faith interpretation of the same, pending final determination. Lessee shall also make good faith efforts to adhere to all provisions of International Standard ISO 27914, First Edition 2017-10, "Carbon dioxide capture, transportation and geological storage — Geological storage," and future editions and amendments to that Standard, and shall do so to the extent it is not financially or operationally impracticable because of project or operational design.

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15. Force Majeure. Should Lessee be prevented from complying with any express or implied covenant of this Lease or from utilizing the LeaseLeased Premises for underground storage purposes by reason of scarcity of or an inability to obtain or to use equipment or material or failure or breakdown of equipment, Act of God or by operation of force majeure, any federal or state law or any order, rule or regulation of governmental authority, then while so prevented, Lessee's Lessee's obligation to comply with such covenant shall be suspended and the primary term of this Lease shall be. In no event shall this Section 15 be construed to be precedent to Lessor's right to terminate the Lease under Section 16. For the avoidance of doubt, the Lessee's obligation to pay the annual rent as described in Section 2(a) shall not be impacted by this Section 15 and the Term of this Lease shall not be extended while and so long as Lessee is prevented by any such cause from utilizing due to this Section 15.

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16. Lessor's Remedies. Lessor shall have, as a remedy for Lessee's default hereunder, all remedies available to it in law or in equity except as any such remedy may be limited by the express terms of this Lease, including, at Lessor's sole discretion, the right to terminate this Lease and all rights inuring to Lessee hereunder by sending written notice of breach to Lessee and if the breach is not cured within sixty (60) days, Lessor may send notice of termination of the Lease to Lessee. Lessee may obtain two additional periods of sixty (60) days upon written request and upon a reasonable showing of due diligence to cure a default or breach. If no cure is made, then upon sending of such written notice of termination, this Lease shall automatically terminate, and all rights granted herein to Lessee shall revert to Lessor. Such termination shall not prejudice the rights of Lessor to collect any money due or to seek recovery on any claim arising hereunder, nor shall any such termination relieve Lessee of its obligations to restore the property for

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~~underground storage purposes and the time while Lessee is so prevented shall not be counted against Lessee, anything in this Lease to the contrary notwithstanding or pay compensation, to indemnify Lessor, and other obligations hereunder that survive expiration or termination of this Lease. If Lessee receives a notice hereunder and disagrees that a breach or default has taken place and Lessee files an action for a declaratory judgment regarding the existence of the breach or default, then termination will be stayed pending adjudication of the existence of a breach or default. In the event of early termination of this Lease or litigation related to a breach or default hereunder, rental payment obligations in Section 2(a) of this Lease will be made until termination is effective or litigation is concluded with a final judgment and any appeal period has run.~~

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~~17. Surface Damage Compensation. The bonus and royalty amounts contemplated and paid to Lessor hereunder is compensation for, among other things, damages sustained by Lessor for lost land value, the lost use of and access to Lessor's land and lost value of improvements, if any and to the extent applicable. Subject to Lessee's obligation to compensate Lessor for the installation of any Facilities on the Leased Premises pursuant to Section 5 of this Agreement, Lessor agrees that such compensation is just and adequate for any and all such damages and all other damages which Lessor may sustain as a result of Lessee's use of the property for its storage operations.~~

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~~18.17. Warranty of Title and Quiet Enjoyment. Lessor represents and warrants to Lessee that Lessor is the owner of the surface of the Leased Premises and the pore space located thereunder. Lessor hereby warrants and agrees to defend title to the Leased Premises and the pore space located thereunder and Lessor hereby agrees that Lessee, at its option, shall have the right to discharge any tax, mortgage, or other lien upon the Leased Premises, and in the event Lessee does so, Lessee shall be subrogated to such lien with the right to enforce the same and apply royalty payments or any other payments due to Lessor toward satisfying the same.~~

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~~Lessor warrants that, except as disclosed to Lessee in writing, there are no liens, encumbrances, leases, mortgages, deeds of trust, options, or other exceptions to Lessor's fee title ownership of the Leased Premises (collectively, "Liens") which are not recorded in the public records of the County~~

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in which the Leased Premises is located. Lienholders (including tenants), whether or not their Liens are recorded, shall be Lessor's responsibility, and Lessor shall cooperate with Lessee to obtain a non-disturbance agreement from each party that holds a Lien (recorded or unrecorded) that might interfere with Lessee's rights under this Lease. A non-disturbance agreement is an agreement between Lessee and a lienholder which provides that the lienholder shall not disturb Lessee's possession or rights under the Lease or terminate this Lease so long as Lessor is not entitled to terminate this Lease under the provisions hereof.

Lessor shall have the quiet use and enjoyment of the Leased Premises in accordance with the terms of this Lease. Lessor's activities and any grant of rights Lessor makes to any person or entity, whether located on the Leased Premises or elsewhere, shall not, currently or prospectively, materially interfere with activities permitted hereunder. If Lessor has any right to select, determine, prohibit or control the location of sites for drilling, exploitation, production and/or exploration of minerals, hydrocarbons, water, gravel, or any other similar resource in, to or under the Lease Premises, then Lessor shall exercise such right so as to minimize interference with any of the foregoing.

**18. As Is, Where Is. LESSEE HAS HAD THE OPPORTUNITY TO INSPECT THE PHYSICAL, GEOLOGICAL, AND TOPOGRAPHIC CONDITION OF THE PROPERTY AND ACCEPTS SAME "AS IS" IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. LESSEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF THE LESSOR REGARDING ANY ASPECT OF THE PROPERTY, BUT IS RELYING ON LESSEE'S OWN INSPECTION OF THE PREMISES AND PROPERTY. LESSOR DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER WARRANTY WHATSOEVER NOT EXPRESSLY SET FORTH IN THIS LEASE. LESSEE MAKES ITS OWN DETERMINATION OF THE USABILITY OF THE PROPERTY FOR SEQUESTRATION OF CARBON DIOXIDE. THE USE OF THE TERMS "GRANT" AND/OR "CONVEY" IN NO WAY IMPLIES THAT THIS LEASE OR THE PROPERTY ARE FREE OF LIENS, ENCUMBRANCES AND/OR PRIOR RIGHTS. LESSEE IS HEREBY PUT ON NOTICE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCES MAY BE OF RECORD AND LESSEE IS ADVISED TO EXAMINE ALL RECORDS OF THE STATE AND COUNTY IN WHICH THE PROPERTY IS LOCATED. THE TERMS OF THIS SECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

**19. Environmental Incentives and Tax Credits. Except as determined by Section 3 ("Royalty"), Lessee shall be the owner of (i) any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to Lessee's geologic storage operationsCarbon Dioxide Geologic Storage Operations, including any avoided emissions and the reporting rights related to these avoided emissions, such as 26 U.S.C. §45Q Tax Credits, and any other attributes of Lessee's ownership of the Facilities and Lessee's geologic storage operationsCarbon Dioxide Geologic Storage Operations, ("Environmental Attributes"), and (ii) any and all credits, rebates, subsidies, payments or other incentives that relate to the use of technology incorporated into Lessee's geologic storage operationsCarbon Dioxide Geologic Storage Operations, environmental benefits of such operations, or other similar programs available from any regulated entity or any governmental authority ("Environmental**

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Incentives”). Lessee is further entitled to the benefit of any and all (a) investment tax credits, (b) production tax credits, (c) credits under 26 U.S.C. §45Q credits, and (d) similar tax credits or grants under federal, state or local law relating to Lessee’s ~~geologic storage operations~~Carbon Dioxide Geologic Storage Operations (“Tax Credits”). Lessor shall (i) cooperate with Lessee in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, and (ii) shall allow Lessee to ~~take any actions necessary to~~ install additional equipment on the Facilities ~~as is reasonably necessary and subject to Easements as defined in Section 5(a).~~ to comply with all monitoring and reporting obligations; ~~and allow Lessee’s personnel to enter the premises and collect any data Lessee requires to satisfy its obligations required in connection with obtaining Tax Credits and Environmental Attributes.~~ Lessor shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless ~~immediately~~ reimbursed by Lessee. If any Environmental Incentives are paid directly to Lessor, Lessor shall immediately pay such amounts over to Lessee, ~~less Lessor’s appropriate share as determined by Section 3 (“Royalty”), at Lessor’s election.~~

~~20. Assignment. The rights of either Party hereto may be assigned in whole or part. The assigning party shall provide written notice of any assignment within sixty (60) days after such assignment has become effective; provided, however, that an assigning party’s failure to deliver written notice of assignment within such 60 day period shall not be deemed a breach of this Lease unless such failure is willful and intentional. The Lessor’s consent shall not be required for an assignment by the Lessee of this Lease, whether by way of a collateral assignment to its financiers or otherwise.~~

~~21. Change of Ownership. No change of ownership in the Leased Premises shall be binding on the Lessee for purpose of making payments to Lessor hereunder until the date Lessor, or Lessor’s~~

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~~successors or assigns, furnishes Lessee the recorded original or a certified copy of the instrument evidencing the change in ownership. The Lessor's consent shall not be required for a change in the direct or indirect control of the Lessee.~~

20. Assignments void this Lease. Lessee shall not assign this Lease to any other party without the prior written consent of Lessor, with Lessor's consent not to be unreasonably withheld, provided, however, that if any assignment by Lessee, Lessee shall remain fully responsible for all obligations, responsibilities and liabilities in this Lease (including, but not limited to, requirements as to restoration, indemnity, and insurance). Notwithstanding the foregoing, Lessee shall have the right without obtaining Lessor's consent, to convey, assign, sublease or otherwise transfer to any person all or any portion of its interest under this Lease only if necessary and in order to encumber, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) all or any portion of its right, title or interest in this Lease to any lender as security for the repayment of any indebtedness. No such sale, conveyance, assignment, sublease or other transfer shall relieve Lessee of its obligations under this Lease. Any assignment other than as allowed by this section will immediately terminate and void this Lease except that Lessee's obligations including rental and royalty obligations and property bondi obligations will not terminate.

22-21. Notices. All notices required to be given under this Lease shall be in writing and addressed to the respective Party at the addresses set forth at the beginning of this Lease unless otherwise directed in writing by either Party.

22. Permits. Lessee shall be solely responsible for applying for and obtaining any and all necessary permits for construction and operation of the Facility, including, without limitation, Class VI UIC well permits. Likewise, Lessee shall be solely responsible for ongoing compliance with and will comply with all federal, State, and local laws, ordinances, Conditional Use Permits and regulations that are or become applicable to its operations or facilities on the Leased Premises. Lessee must be able to demonstrate to Lessor, to Lessor's reasonable satisfaction, that all such permits have been obtained and that Lessee is in compliance with all such applicable laws, ordinances, and regulations at the time that Lessee proposes to begin any construction under this Lease. With regard to its obligations under this section, "Lessee" includes the named Lessee as well as its agents and contractors. Lessee shall submit to Lessor a copy of all filings and reports, when filed, that Lessee must file with the relevant governmental authority in connection with maintaining its Class VI Permit(s). Notwithstanding any other provision of this Lease to the contrary, if Lessee has not applied for a Class VI Permit for the Leased Premises or land amalgamated with the Leased Premises within two (2) years from exercise of the Option and execution of this Lease, Lessor may terminate this Lease upon thirty (30) days written notice thereof delivered to Lessee.

23. Costs of Future Documentation. Lessee or any Mortgagee or Assignee requesting or receiving from Lessor additional, new or revised documents under the terms of this Lease shall pay Lessor's reasonable legal fees and other out of pocket expenses related to preparation, review, execution and delivery of the documents requested or received.

23-24.No Waiver. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Lease or to take advantage of any of its rights

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hereunder shall not be construed as a waiver of ~~or acquiescence to~~ any such provision or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

~~24. Notice of Lease. This Lease shall not be recorded in the real property records. Lessee shall cause a memorandum of this Lease to be recorded in the real property records of the county in which the Leased Premises are situated.~~

~~25. Confidentiality. Lessor shall maintain in the strictest confidence, for the benefit of Lessee, all information pertaining to the compensation paid under this Lease, any information regarding Lessee and its business or operations on the Leased Premises or on any other lands, the capacity and suitability of any Reservoir or reservoirs and subsurface pore spaces, stratum or strata unitized or amalgamated therewith, and any other information that is deemed proprietary or that Lessee requests or identifies to be held confidential, in each such case whether disclosed by Lessee or discovered by Lessor.~~

~~26-25. Counterparts. This Lease may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall collectively constitute one and the same instrument.~~

~~27-26. Severability. If any provision of this Lease is found to be invalid, illegal or unenforceable in any respect, such provision shall be deemed to be severed from this Agreement Lease, and the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.~~

~~28-27. Governing Law. This Lease shall be governed by, construed and enforced in accordance with the laws of the State of North Dakota without regard to its choice of law or conflict of law common law and the Parties hereby submit to the jurisdiction of the state or federal courts located in the State of North Dakota.~~

~~29-28. Further Assurances. Each Party will execute and deliver allany documents, reasonably necessary to achieve the purpose of this Lease and that do not alter or modify any rights or obligations and will provide all information, and take or forbear from all actions in response to any reasonable request as may bereasonably necessary, or appropriate to achieve the purposes of this Lease, including without limitation executing a memorandum of this Lease and all documents required to obtain any necessary government approvals.~~

~~30-29. Entire Agreement. This Lease constitutesand its exhibits and related documents (whether executed contemporaneously or in the future) constitute the entire agreement between the Parties and supersedessupersede all prior negotiations, undertakings, notices, memoranda and agreement between the Parties, whether oral or written, with respect to the subject matter hereof. This Lease may only be amended or modified by a written agreement duly executed by Lessor and Lessee.~~

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31.30. Cooperation with Financiers. The Lessor hereby acknowledges and consents that Lessee may ~~grant~~~~convey~~ a collateral assignment or leasehold mortgage of Lessee's rights under this Lease to Lessee's debt financiers, it being understood that such collateral assignment or leasehold mortgage would only encumber the leasehold interest created hereunder ~~and would not alter or modify any rights or obligations under this Lease.~~

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32.31. Favored Nations Neighbor. If, at any time ~~within the twelve (12) month period following the Effective Date,~~ Lessee enters into a pore space lease agreement with a third party landowner covering any part of Lessee's storage facility ("Third-Party Lease"), and if any of the payments, terms or conditions specified in the Third-Party Lease would have been more favorable to Lessor had Lessor executed a lease agreement similar to the Third-Party Lease, then Lessor and Lessee will amend this Lease so that it reflects compensation ~~or other~~ terms similar to the Third-Party Lease, and Lessee will pay to Lessor the additional compensation, if any, that Lessor would have been paid had Lessor signed a lease agreement similar to the Third-Party Lease. For the purposes of this Section ~~32.31,~~ "Lessee's storage facility" shall mean any storage facility (as such term is defined in ch. 38-22 of the North Dakota Century Code) operated by Lessee within a ~~ten (10)~~~~twenty (20)~~ mile radius of the Leased Premises which is subject to a permit issued by the Commission pursuant to, ch. 38-22, of the North Dakota Century Code.

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32. Right to Audit. Lessor has the right to audit any and all records of the Lessee that are associated with this Lease or the storage facility as defined in Section 31. Audits will be conducted by a third party, at Lessor's expense. If the results of the audit find any deficiency that deprived Lessor of a benefit under this Lease, then Lessee will pay for the full cost of the audit and remedy the deficiency immediately.

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33. Electronic Signatures. This Lease, and any amendments hereto, to the extent signed and delivered by means of electronic transmission in portable document format (pdf) or by DocuSign or similar electronic signature process, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

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34. Lessee's Authority. Lessee hereby represents and warrants to Lessor that (i) Lessee is authorized to do business in the State of North Dakota, (ii) entering into this Lease is an action duly authorized on behalf of Lessee by its management and in accordance with its corporate governance documents, and (iii) the person executing and delivering this Lease has the requisite authority to bind Lessee to Lessee's obligations hereunder.

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35. Interpretation. Each Party has reviewed this Lease with its respective counsel and agree that this Lease has been fairly negotiated at arm's length. This Lease shall not be construed against either Party and the principle of contract construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Lease.

36. Headings. The captions used in connection with the sections of this Lease are for convenience only and shall not be deemed to construe or limit the meaning of the language of this Lease.

37. Recording. Lessee is obligated to record this Lease along with its exhibits with the County

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Recorder within a reasonable time after execution of all documents. Lessee shall give Lessor notice when the recording is complete.

IN WITNESS WHEREOF, the Parties have executed this Lease effective for all purposes as of the Effective Date.

**LESSOR:**

By: \_\_\_\_\_

Print: \_\_\_\_\_

By: \_\_\_\_\_

Print: \_\_\_\_\_

~~34. Insurance. Lessee shall obtain and maintain in force commercial general liability insurance covering the Facilities and Lessee's activities on the Leased Premises at all times during the term of this Lease, with a minimum occurrence and aggregate limit of one million dollars (\$1,000,000). Such insurance coverage for the Facilities and Leased Premises may be provided as part of a blanket policy that covers other Facilities or properties as well. Any such policies shall include Lessor as an additional insured. Lessee, or its insurer, shall provide thirty (30) days prior written notice (except ten (10) days for nonpayment of premium) to Lessor of any cancellation. Lessee shall provide Lessor with copies of certificates of insurance evidencing this coverage upon request by Lessor.~~

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IN WITNESS WHEREOF, the Parties have executed this Lease effective for all purposes as of the Effective Date.

**LESSOR:**

By: \_\_\_\_\_

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~~IN WITNESS WHEREOF, the Parties have executed this Lease effective for all purposes as of the Effective Date.~~

~~Effective Date: \_\_\_\_\_ LESSEE:~~

~~SUMMIT CARBON SOLUTIONS, LLC~~

~~By: \_\_\_\_\_~~

~~Print: \_\_\_\_\_~~

~~Its: Executive Vice President~~

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Effective Date:

\_\_\_\_\_

LESSEE:

SUMMIT CARBON SOLUTIONS, LLC

By:

\_\_\_\_\_

Print:

\_\_\_\_\_

Its:

Executive Vice President

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**EXHIBIT A**

[Survey Plat to be Provided]

**EXHIBIT B**

**EXERCISE OF OPTION**

By signing below and delivering a copy of such to Lessor as specified above, Lessee hereby exercises the above Option.

**SUMMIT CARBON SOLUTIONS, LLC**

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: Executive Vice President

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Dated: \_\_\_\_\_

SUMMIT CARBON SOLUTIONS, LLC

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: Executive Vice President \_\_\_\_\_

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**EXHIBIT C**

REAL PROPERTY INTEREST

This Lease ~~Agreement~~ is subject to the following real property located in Oliver County, North Dakota more particularly described as:

Containing \_\_\_\_\_ acres, more or less.

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**EXHIBIT D**

**EASEMENT: CARBON DIOXIDE SURFACE FACILITIES**

This Lease Agreement is subject to a Royalty Escalation. The royalty shall increase TEN percent (10.0%) on January 1, 2026, and an additional TEN percent (10.0%) every five years thereafter. For issued under the avoidance Pore Space Lease dated XXXX, as identified by a Memorandum of doubt, Pore Space Lease recorded with the royalty XXX County Recorder as document number XXXX.

\_\_\_\_\_ whose address is \_\_\_\_\_ (OWNER), in consideration as defined in Section 1, which initial payment has been received, conveys to **Summit Carbon Solutions, LLC, an Iowa limited liability company, whose address is 1805 Collaboration Place, Suite 1200, Ames, IA 50010,** (OPERATOR), a nonexclusive easement to construct, operate, maintain, and remove (non-linear facilities such as compressor or pumping station, well site, storage or office building site, tower site, or any other improvement or structure that requires a non-linear easement ("Surface Facilities" or "Facility"), over land hereafter referred to as the "easement area", which is described by the following metes and bounds survey:

**(qtr) of Section (#), T(#)N, R(#)W, (County) County**

A Survey Plat and Written Narrative, titled Exhibit "A," shall be prepared by a Registered Land Surveyor and shall depict and describe the proposed location of the Facility(s). The boundary of the Facility must be described using a metes and bounds. The survey plat must be accompanied by a written narrative describing the boundary, the number of acres within the easement, and the survey plat must depict, and the written narrative must include, the points of beginning and ending of the survey with said points tied to known and monumented government section or quarter corners of the property on which they occur. The completed survey plat and written narrative must be attached to this easement as Exhibit "A." The fully executed easement must be filed with the County Recorder by OPERATOR immediately upon its execution and easement consideration payment to OWNER. No real property rights will be conveyed by this easement unless they are specifically described in this easement and described on Exhibit A. OPERATOR will provide an as-built survey plat which will be labeled as Exhibit A-1 and will contain the actual as-built boundary of the Facility if it is different than that indicated on Exhibit A.

The easement area contains (acres) acres, more or less. The easement area is further described and illustrated Exhibit "A," (Ltr)" which is attached to and is a part of this easement.

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1. In Consideration for the rights conveyed to OPERATOR under this easement, OPERATOR agrees to pay OWNER consideration pursuant to Exhibit F and provide a payment receipt and breakdown itemizing the consideration.
2. The only use to which this easement may be put is for operations reasonably necessary for Carbon Dioxide geologic storage purposes as defined in the Pore Space Lease, and therefore, it may not be used for any other purpose, such as, and including but not in any way limited to, injection, processing, compression, transportation or treatment of any substances other than Carbon Dioxide as defined in the Pore Space Lease.
3. This easement will remain in effect for so long as Carbon Dioxide geologic storage injection operations authorized by the Pore Space Lease continue at the Surface Facilities, but in no event after Termination of the Pore Space Lease.
4. A material breach of any material terms of this easement by OPERATOR shall be grounds for termination of this easement. OWNER shall give OPERATOR written notice of violation or default at the address written above and OPERATOR shall have 30 days after receipt of said notice to rectify such violations or defaults. In the event OPERATOR fails to comply, OWNER may terminate this easement and record a notice of easement termination with the Recorder of the County in which the Surface Facilities are situated.
5. If construction of the Surface Facilities is not completed within one year after OWNER signs this easement, this easement automatically terminates.
6. OPERATOR, or its agent, shall have a legible copy of this easement with them on site for reference during construction, operation, maintenance or reclamation and shall present the copy upon OWNER's request. OPERATOR will ensure that there is at least one specific meeting at which any construction contractors are notified of the requirements of this easement as it relates to construction of the Surface Facilities.
7. In addition to the consideration paid ~~is calculated~~ to the OWNER, OPERATOR shall make a satisfactory settlement with the surface tenant for damage to seeded annual crops, fences or other improvements owned by the tenant, caused by construction, operation, maintenance or removal of the Surface Facilities and shall notify the surface tenant of the construction schedule at least one week before construction.
8. OPERATOR shall maintain the natural water flow and drainage.
9. If, prior to or during construction, archeological or paleontological items are discovered or such items are disturbed, OPERATOR shall cease construction activities immediately. OPERATOR shall then promptly notify OWNER and must not resume construction until written approval is given by OWNER. OWNER shall act with reasonable promptness to review items discovered and to decide whether to remove or protect them and to then complete removal or protection.

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10. Any fixtures, structures, installations, or facilities constructed or installed by OPERATOR are the property of OPERATOR and may be removed by OPERATOR at any time during the Term of this easement.
11. Prior to the end of the Term, OPERATOR shall remove all improvements, both above ground and underground, from the easement area when the easement is abandoned or in any other way terminated, unless authorized to do otherwise in writing by OWNER. Upon termination of the easement, OPERATOR will provide OWNER a release of easement suitable for recording in the public record, restore all areas disturbed, occupied, or used by OPERATOR, remediate any contaminants introduced by OPERATOR's operations, and restore the surface to its original condition and productivity.
12. OPERATOR shall, prior to construction, maintenance, or removal, reserve all topsoil from areas subject to topsoil and subsoil mixing as depicted on Exhibit B. The reserved soil must be stockpiled to minimize wind and water erosion. No soil segregation or stripping will be conducted in frozen soil conditions. Upon completion of construction, and maintenance or removal, OPERATOR shall promptly reclaim the disturbed area. It must be recontoured to conform to the adjacent natural topography, rocks exposed by excavation must be removed or piled on a location agreed to in writing by OWNER, the reserved soil must be evenly respread over the disturbed area, and the entire disturbed area must be revegetated with a mixture of native perennial grasses as shown in Exhibit C except in cropland or hayland. Reclamation is not complete until rocks are removed from the surface, erosion is controlled and the surface is revegetated with a mixture of native perennial grasses, an alfalfa mix on hayland, or a cover crop if soil is disturbed in cropland between January 1 and July 30 or soil will remain uncovered for any period longer than forty-five (45) days.
13. After construction is complete, topsoil shall be evenly respread on all areas from which it was removed, except those areas covered by construction aggregate or any other surfacing material. The topsoil from those areas covered by construction aggregate or other surfacing material shall remain stockpiled for use during the reclamation of the Surface Facilities. All exposed soil surfaces not covered by construction aggregate or other surfacing materials shall be revegetated with a mixture of native perennial grasses approved by OWNER prior to revegetation sufficient to prevent accelerated erosion and restore, as closely as possible, the original long-term productivity.
14. Where the soil of the easement area is disturbed by OPERATOR's activities, whether authorized hereunder or not, OPERATOR shall restore soil productivity levels on all areas not being actively used for its Surface Facilities. Soil productivity levels will be measured with reference to re-vegetation success. Re-vegetation on hay land, pastureland, and native prairie shall be considered successful if the density and cover of non-nuisance, desirable plant species is equal to or greater than adjacent undisturbed portions of the same field. On cropland, re-vegetation shall be considered successful if crop yields are equal to adjacent undisturbed portions of the same field grown under the same conditions. On hay land, the land will be re-vegetated with a local adapted variety of alfalfa at the rate of 5.5 lb./acre, and a cover crop such as oats will be used as necessary to establish the alfalfa on the hay land, or as otherwise agreed to by OWNER. On native prairie and pasture, the land will be re-vegetated pursuant to the specifications contained in Exhibit C.

15. In areas where temporary fencing is necessary to keep livestock out of the easement areas (i.e. non-cultivated pasture land), OPERATOR shall install temporary fencing around the total easement areas (temporary, additional, and permanent) before commencement of construction, which fences shall remain until the entire easement area has been reclaimed. At the conclusion of reclamation activities, temporary fencing shall become the property of the OWNER. Before construction of any fence by OPERATOR, OPERATOR will consult with OWNER as to the location of the fence and the location of any gates reasonably necessary for OWNER's access to water and forage along the easement areas. If OWNER chooses, OWNER may notify OPERATOR in writing that OWNER will install this fencing, and provide an estimate based on market rates for one of the types of fences described below. OPERATOR will reimburse OWNER for the cost of the estimate, unless OPERATOR believes the estimate is unreasonable, in which case OPERATOR will obtain a reasonable estimate based on market rates and reimburse that amount to OWNER.

a. Unless otherwise agreed to in writing by OWNER and as long as OWNER supplies power to the fence, any fence installed by OPERATOR under this section will be reasonably similar to the two-wire power fence described in the NRCS spec sheet, which requires use of smooth, single-strand, 12.5 gauge high-tensile strength (170,000 psi, minimum), type III galvanized or better wire and a top wire (hot wire) at least 26 inches above ground line and the bottom wire (ground wire) 8 to 12 inches below the top wire. The bottom (ground) wire will be connected either directly to the negative side of the energizer or to the same grounding rod(s) as the energizer. In situations where the earth provides adequate ground to complete the circuit, both wires may be energized. Tension on each wire shall be sufficient to maintain proper wire spacing between line posts. In-line strainers will be installed on each wire to maintain correct tension on each wire between all brace corners and gate assemblies. Tension springs may be used on each wire to maintain proper tension. In the absence of power, OPERATOR shall install a basic four strand barbed-wire fence, utilizing Red Brand 2 point barbed wire with studded t posts weighing a minimum of 1.25 pounds/foot. Such barbed wire fence shall meet the installation specifications in the NRCS spec sheet.

16. OPERATOR shall take necessary precautions to prevent fires. In the event of a fire caused by the OPERATOR or its agent, OPERATOR shall compensate the OWNER's surface tenant(s) for their losses including forage, crop and any other losses; and shall compensate OWNER for any loss it suffers due to the fire.

17. OPERATOR shall conduct all activities associated with the Surface Facilities in a manner that avoids the degradation of the area's air, land, water quality, audible and visual resources.

18. Prior to the end of the Term, OPERATOR shall dispose of all surface contaminated soil, remove debris, recontour the disturbed surface to conform with the original terrain, remove all rocks greater than 4" in diameter or pile them on a location agreed to in writing by OWNER, and evenly respread the reserved soil and reseed with a mixture of native grasses as specified in Exhibit C except on cropland and hayland. After seeding, the entire disturbed area shall be fenced to exclude livestock. Reclamation shall not be deemed completed until erosion is controlled, the surface is revegetated and soil productivity is restored, and written approval is received from the OWNER, not to be unreasonably withheld. Upon approval of reclamation by the OWNER, this easement shall terminate and a Release or Termination of Easement document may be recorded by OWNER or OPERATOR with the County Recorder.

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19. OPERATOR shall implement reasonable measures to prevent accelerated erosion. If an erosion problem develops, OPERATOR shall immediately take the necessary actions to correct it and shall repair any erosion damage. OPERATOR will provide a copy of all Stormwater Pollution and Prevention Plans ("SWPPPs") that apply to OPERATOR'S operations regarding the easement to OWNER promptly upon completion or amendment to the SWPPP and will notify OWNER of any violations of the SWPPP or required modifications or repairs to BMPs under the SWPPP.

20. Through this easement, OPERATOR is not acquiring and OWNER is not conveying any subsurface or mineral interest other than those explicitly conveyed by this easement. Subsurface and Mineral interests include, but are not limited to pore space other than that subject to this easement, oil, gas, coal, cement materials, water, sodium sulfate, sand and gravel, scoria, aggregate, road material, building stone, chemical substances, metallic ores, uranium ores, or colloidal or other clays. Subsurface and Mineral interests include any commercially mineable or extractable substance legally classifiable or classified as a mineral interest. If any such interest is or will likely be excluded from mining or development because of the presence of this easement or the (Type of Structure) allowed by this easement, or if the location of the easement and (Type of Structure) interferes or will likely interfere with the mining or development of subsurface interests outside of the easement area, OWNER will give OPERATOR at least sixty (60) days written notice of the conflict between this easement and OWNER's right to mine and develop subsurface interests. At the end of the sixty day period OPERATOR must either pay OWNER the amount of lost royalties as determined by OWNER for the damages suffered because of OWNER's inability to mine or develop subsurface interests, or to benefit from their mining or development, or OPERATOR must agree to relocate the easement and the (Type of Structure) to another location within the tract, provided OWNER determines that a suitable substitute location exists on the tract. If OPERATOR selects relocation and if OWNER agrees that a suitable substitute location exists, this easement will be revised to describe the easement's new location and OPERATOR will move all structures and other physical features of the easement to the new location. Relocation does not entitle OWNER to additional compensation but OPERATOR must bear all relocation costs. OPERATOR must promptly complete relocation.

21. The OPERATOR agrees to defend, indemnify, and hold harmless Lessor from any damages to the property or person or to claims by any person that are a direct result of the OPERATOR's use of the easement and easement area. Notwithstanding the foregoing, such indemnity/hold harmless obligation excludes (i) any claim or cause of action, or alleged or threatened claim or cause of action, damage, judgment, interest, penalty or other loss arising entirely from the negligence or intentional acts of OWNER or OWNER's agents, invitees, or licensees; or third parties, and (ii) any claim for exemplary, punitive, special or consequential damages claimed by OWNER. OPERATOR agrees to defend, indemnify and hold harmless OWNER, its family members, members, shareholders, directors, managers, partners, officers, employees, agents and contractors (the Indemnified Parties) from and against, and shall promptly reimburse each Indemnified Party with respect to any claim, investigation, demand, administrative or court proceeding, or cause of action, including any actual loss, cost, expense, liability, fine, penalty, fee, or damage incurred or suffered by the Indemnified Party (including reasonable fees and expenses of attorneys, technical experts and expert witnesses, court costs and other out-of-pocket expenses) and resulting from OPERATOR'S breach of this Agreement, OPERATOR'S violation of any law, rule or regulation, OPERATOR'S negligence or willful misconduct, or

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any act of OPERATOR causing a loss to OWNER and arising out of or related to OPERATOR's operations on the Property. Neither the coverage nor the limits of insurance required by this Agreement shall in any way restrict the foregoing indemnity obligation.

22. OPERATOR shall not discharge any hazardous liquids or toxic substances onto the easement area or land adjacent to the easement area. All discharges of hazardous liquids or toxic substances shall be stopped as soon as possible after discovery and acted upon immediately to halt movement of such discharges. Any such discharges shall be reported immediately to the OWNER. The OPERATOR shall then restore and reclaim the affected area .
23. OPERATOR shall secure and keep in force during the term of this easement all Insurance Requirements as defined in the Pore Space Lease.
24. OPERATOR shall control all noxious and nuisance weeds in the easement area. DEVELOPER will be liable for any noxious or invasive weeds introduced onto the easement area or adjoining property, or, in any way, caused by OPERATOR and OPERATOR and will indemnify OWNER for any violations, enforcement actions and mitigation requirements imposed by any entity under North Dakota statutory law, including N.D.C.C. ch. 4.1-47.
25. OPERATOR will prevent the filing of any construction liens, and all other liens, resulting from its activities on the easement area. If any such liens are filed because of OPERATOR's activities, OPERATOR will, at its own expense, provide a bond in the amount of any lien or provide other security as required by North Dakota Century Code Chapter 35-21 or other law as necessary to provide clear title to OWNER immediately upon recordation of any lien.
26. OWNER neither warrants nor agrees to defend title to the easement area.
27. OWNER reserves the right to use the easement area and to allow others to use the easement area for purposes compatible with OPERATOR's use. If someone other than OWNER uses the easement area in a manner inconsistent with OPERATOR's use, OWNER is not liable or responsible.
28. OPERATOR shall not assign or in any way transfer, in whole or in part, this easement or rights under it unless OWNER gives written consent. Any assignment or other transfer without OWNER's written consent is void and automatically voids this easement.
29. This easement is subject to all existing easements and nothing in this easement supersedes any rights previously granted.
30. This easement is also subject to the conditions in Exhibits "A" Survey Plat and Written Narrative, "B" Soil Reservation and Reclamation Requirements & "C" Native Grass Seeding Specifications which are attached and made a part of this easement.

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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022, at Bismarck, North Dakota.

OWNER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF NORTH DAKOTA )

) ss.

COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_, known to me to be the person who executed this instrument and acknowledged to me that he executed the same.

( S E A L )

Notary Public

OPERATOR:

**Summit Carbon Solutions, LLC**

\_\_\_\_\_  
(signature) On Behalf of **Summit Carbon Solutions, LLC**

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_ (title), acting on behalf of **Summit Carbon Solutions, LLC**, known to me to be the person who executed this instrument and acknowledged to me that he executed the same.

( S E A L )

Notary Public

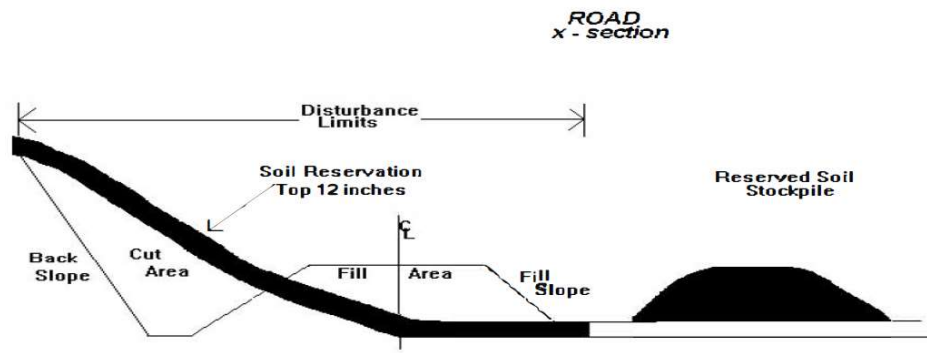
ROW (#)

EASEMENT: Surface Facilities Exhibit "A"

[SURVEY PLAT TO BE PROVIDED]



ROW (#)

**EASEMENT: Surface Facilities Exhibit "B"****SOIL RESERVATION AND RECLAMATION SPECIFICATIONS****REQUIRED METHOD FOR SURFACE FACILITIES**

Prior to construction or maintenance of the herein authorized easement area the top twelve (12) inches of soil shall be reserved and stockpiled from all areas to be disturbed, including the facility location site, fillslope and backslope areas, as shown above, and all other areas subject to topsoil and subsoil mixing. The reserved soil shall be stockpiled such that wind and water erosion are minimized. Following soil reservation, cut and fill operations can proceed. If the facility site will be permanent, then all or a portion of the reserved soil shall be respread as needed to stabilize facility cut and fill slopes. Structures (i.e., culverts, finger dikes, etc.) must be added to assure proper drainage and to stabilize erosion. All disturbed areas must be seeded to a native grass seed mixture found on Exhibit "C" attached.

ROW (#)

**EASEMENT: Surface Facilities Exhibit "C"**

**NATIVE GRASS SEEDING SPECIFICATIONS**

<u>Date:Species</u>	<u>Royalty Rate:lbs. PLS*/acre</u>
<u>Western wheatgrass</u>	
<u>Slender wheatgrass</u>	<u>8</u>
<u>Green needlegrass</u>	<u>5</u>
<u>Side-oats grama</u>	<u>4</u>
<u>Beginning January 1, 2026</u>	<u>\$0.275</u>
<u>Beginning January 1, 2031</u>	<u>\$0.30319</u>
<u>Beginning January 1, 2036</u>	<u>\$0.333</u>
<u>Beginning January 1, 2041</u>	<u>\$0.366</u>
<u>Beginning January 1, 2046</u>	<u>\$0.403</u>
<u>Beginning January 1, 2051</u>	<u>\$0.443</u>
<u>Beginning January 1, 2056</u>	<u>\$0.487</u>
<u>Beginning January 1, 2061</u>	<u>\$0.536</u>
<u>Beginning January 1, 2066</u>	<u>\$0.589</u>
<u>Beginning January 1, 2071</u>	<u>\$0.648</u>
<u>Beginning January 1, 2076</u>	<u>\$0.713</u>

**SUMMIT\*PLS - Pure Live Seed (based on 50 PLS/sq. feet)**

1. The seed bed should be firmly packed (footprints left in the soil should be less than 1/2 inch deep).
2. An early spring seeding (before May 24th) is preferred. A dormant fall seeding (after October 20th) is acceptable.
3. A cover crop of oats at 10 lbs. PLS/acre must be seeded on the disturbed area.
4. A drill designed specifically for native grass seeding will give the best seeding results. The seed should be planted at a depth of 1/2 to 1 inch. Precaution must be taken not to plant the seed too deeply in the soil or poor germination will result.
5. On areas where equipment cannot be used, broadcast seed and rake or drag to cover seed. Where seed is broadcast, double the seeding rate.
6. Use only North Dakota certified seed.

**CAUTION: Be sure to clean out the drill before seeding to avoid any contamination with smooth brome grass or crested wheatgrass that may remain in the drill from previous use on private land. These are invasive grasses in native prairie and are not allowed on school trust lands. Contamination with or use of crested wheatgrass or smooth brome**

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will result in the applicant being required to spray out the grass and reseed with the above native grass seed mixture. Sweet clover and alfalfa are also not allowed – only the above native grass seed mixture may be used for revegetation.

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**EXHIBIT E**

**EASEMENT; CARBON SOLUTIONS DIOXIDE LINEAR**

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This easement is issued under the Pore Space Lease dated XXXX, as identified by a Memorandum of Pore Space Lease recorded with the XXX County Recorder as document number XXXX.

\_\_\_\_\_ whose address is \_\_\_\_\_ (OWNER), in consideration as defined in Section \_\_\_\_\_, which initial payment has been received, conveys to Summit Carbon Solutions, LLC, an Iowa limited liability company, whose address is 1805 Collaboration Place, Suite 1200, Ames, IA 50010, (OPERATOR), a [choose: Nonexclusive or Exclusive] easement to construct, operate, maintain, and remove, **(LINEAR infrastructure: number, type of structure, diameter, voltage, overhead, underground, etc.)** ("Facility") over certain land hereafter referred to as the "easement area", which is a strip of land **(Width)** feet wide, **(Feet)** feet on each side of the following described centerline:

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Dated: \_\_\_\_\_ By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: Executive Vice President \_\_\_\_\_ **(gtr) of Section (#), T(#), R(#), W, (County) County**

A Survey Plat and Written Narrative, titled Exhibit "A" shall be prepared by a Registered Land Surveyor and shall depict and describe the accurate proposed location of the Facility(s). The boundary of the Facility must be described using a centerline survey. The survey plat must be accompanied by a written narrative describing the centerline description, the number of rods within the easement and the survey plat must depict, and the written narrative must include, the points of beginning and ending of the survey with said points tied to known and monumented government section or quarter corners of the property on which they occur. The survey must also depict and describe those segments subject to no surface disturbance which require horizontal boring (Section 2). The completed survey plat and written narrative must be attached to this easement as Exhibit A. The fully executed easement must be filed with the County Recorder by OPERATOR immediately upon its execution and easement consideration payment to OWNER. No real property rights will be conveyed by this easement unless they are specifically described in this easement and described on Exhibit A. OPERATOR will provide an as-built survey plat which will be labeled as Exhibit A-1 and will contain the actual as-built centerline of the Facility if it is different than that indicated on Exhibit A.

The centerline is **(Centerline Feet)** feet or **(Rods)** rods long, and the easement area contains

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(Acres) acres, more or less. The easement area is further described and illustrated in Exhibit "A," which is attached to and is a part of this easement

1. The (Type of Structure) shall be built only on the centerline(s) as described above. OPERATOR may also temporarily use an additional (Temporary Feet) feet of temporary right of way on the working side of the Facility as a construction right of way. This construction right of way shall be subject to the topsoil reservation and reclamation provisions of this easement and must be restored immediately (as non-frozen conditions permit). OPERATOR shall pay consideration to OWNER pursuant to Exhibit F and provide a payment receipt and breakdown itemizing the consideration.
2. (OPTIONAL)OPERATOR agrees to request a list of areas from OWNER which OWNER designates for horizontal boring only and there will be no surface disturbance or surface occupancy of the easement area in the specific locations designated for horizontal boring only.
3. (OPTIONAL)The top of the Facility must be buried at least 60 inches below the ground's surface.
4. OPERATOR may install the following described appurtenance(s) upon or below the surface: (Pig Launcher/Receiver, Aboveground Valve Station, Cathodic Protection Anode Beds). For this/these additional appurtenance(s), OPERATOR has paid OWNER (N/A or dollar amount of additional compensation) as further consideration. OPERATOR shall, when livestock are present or when it is otherwise necessary, protect all above ground appurtenances with a fence adequate to prevent livestock access and shall paint all above ground structures; except wire fences, anchors, guy wires, steel towers, and wood poles; with earth tone colors.
5. If construction of the Facility (Type of Structure) is not completed within one year after OWNER signs this easement, this easement automatically terminates.
6. In addition to consideration payment to OWNER, OPERATOR shall make a satisfactory settlement with the surface tenant for damage to seeded annual crops, fences or other improvements owned by the tenant, caused by construction, operation, maintenance or removal of the (Type of Structure) and shall notify the surface tenant of the construction schedule at least one week before construction.
7. OPERATOR, or its agent, shall have a legible copy of this easement with them on site for reference during construction, operation, maintenance or reclamation and shall present the copy upon OWNER's request. OPERATOR will ensure that there is at least one specific meeting at which any construction contractors are notified of the requirements of this easement as it relates to construction of the (Type of Structure/Pipeline).
8. This easement is subject to all of the OWNER's existing rights and privileges.
9. If, prior to or during construction, archeological or paleontological items are discovered or such items are disturbed, OPERATOR shall cease construction activities immediately. OPERATOR shall then promptly notify OWNER and must not resume construction until

## ROW (#)

written approval is given by OWNER. OWNER shall act with reasonable promptness to review items discovered and to decide whether to remove or protect them and to then complete removal or protection.

10. OPERATOR shall, prior to construction, maintenance or removal, reserve all topsoil. The reserved soil must be stockpiled to minimize wind and water erosion. No soil segregation or stripping will be conducted in frozen soil conditions. Upon completion of construction, and maintenance or removal, OPERATOR shall promptly reclaim the disturbed area. It must be recontoured to conform to the adjacent natural topography, rocks exposed by excavation and greater than 4" must be removed or piled on a location agreed to in writing by OWNER, the reserved soil must be evenly respread over the disturbed area, and the entire disturbed area must be revegetated with a mixture of native perennial grasses as shown in Exhibit C except in cropland or hayland. Reclamation is not complete until rocks are removed from the surface, erosion is controlled and the surface is revegetated with a mixture of native perennial grasses, an alfalfa mix on hayland, or an annual cover crop if soil is disturbed in cropland between January 1 and July 30 or soil will remain uncovered for any period longer than forty-five (45) days.

11. Where the soil of the easement area is disturbed by OPERATOR's activities, whether authorized hereunder or not, OPERATOR shall restore soil productivity levels on all areas not being actively used for its Surface Facilities. Soil productivity levels will be measured with reference to re-vegetation success. Re-vegetation on hay land, pastureland, and native prairie shall be considered successful if the density and cover of non-nuisance, desirable plant species is equal to or greater than adjacent undisturbed portions of the same field. On cropland, re-vegetation shall be considered successful if crop yields are equal to adjacent undisturbed portions of the same field grown under the same conditions. On hay land, the land will be re-vegetated with a local adapted variety of alfalfa at the rate of 5.5 PLS lb./acre, and a cover crop such as oats will be used as necessary to establish the alfalfa on the hay land, or as otherwise agreed to by OWNER. On native prairie and pasture land, the land will be re-vegetated pursuant to the specifications contained Exhibit C.

12. In areas where temporary fencing is necessary to keep livestock out of the easement areas (i.e. non-cultivated pasture land), OPERATOR shall install temporary fencing around the total easement areas (temporary, additional, and permanent) before commencement of construction, which fences shall remain until the entire easement area has been reclaimed. At the conclusion of reclamation activities, temporary fencing shall become the property of the OWNER. Before construction of any fence by OPERATOR, OPERATOR will consult with OWNER as to the location of the fence and the location of any gates reasonably necessary for OWNER's access to water and forage along the easement areas. If OWNER chooses, OWNER may notify OPERATOR in writing that OWNER will install this fencing, and provide an estimate based on market rates for one of the types of fences described below. OPERATOR will reimburse OWNER for the cost of the estimate, unless OPERATOR believes the estimate is unreasonable, in which case OPERATOR will obtain a reasonable estimate based on market rates and reimburse that amount to OWNER.

a. Unless otherwise agreed to in writing by OWNER and as long as OWNER supplies power to the fence, any fence installed by OPERATOR under this section will be reasonably similar to the two-wire power fence described in the NRCS spec sheet,

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which requires use of smooth, single-strand, 12.5 gauge high-tensile strength (170,000 psi, minimum), type III galvanized or better wire and a top wire (hot wire) at least 26 inches above ground line and the bottom wire (ground wire) 8 to 12 inches below the top wire. The bottom (ground) wire will be connected either directly to the negative side of the energizer or to the same grounding rod(s) as the energizer. In situations where the earth provides adequate ground to complete the circuit, both wires may be energized. Tension on each wire shall be sufficient to maintain proper wire spacing between line posts. In-line strainers will be installed on each wire to maintain correct tension on each wire between all brace corners and gate assemblies. Tension springs may be used on each wire to maintain proper tension. In the absence of power, OPERATOR shall install a basic four strand barbed-wire fence, utilizing Red Brand 2 point barbed wire with studded t posts weighing a minimum of 1.25 pounds/foot. Such barbed wire fence shall meet the installation specifications in the NRCS spec sheet.

13. OPERATOR shall implement reasonable measures to prevent accelerated erosion. If an erosion problem develops, OPERATOR shall promptly take the necessary actions to correct it and shall repair any erosion damage. OPERATOR will provide a copy of all Stormwater Pollution and Prevention Plans ("SWPPPs") that apply to OPERATOR'S operations regarding the easement to OWNER promptly upon completion or amendment to the SWPPP and will notify OWNER of any violations of the SWPPP or required modifications or repairs to BMPs under the SWPPP. OPERATOR will be strictly liable for any damage caused to water sources such as creeks, streams, reservoirs, and stock ponds as a result of accelerated erosion caused in whole or part by its operations.
14. OPERATOR shall not discharge any hazardous liquids or toxic substances onto the easement area or land adjacent to the easement area. All discharges of hazardous liquids or toxic substances shall be stopped as soon as possible after discovery and acted upon immediately to halt movement of such discharges. Any such discharges shall be reported immediately to the OWNER. The OPERATOR shall then restore and reclaim the affected area.
15. OPERATOR shall secure and keep in force during the term of this easement all Insurance Requirements as defined in the Pore Space Lease.
16. OPERATOR shall control all noxious and nuisance weeds in the easement area. OPERATOR will be liable for any noxious or invasive weeds introduced onto the easement area or adjoining property, or, in any way, caused by OPERATOR and OPERATOR and will indemnify OWNER for any violations, enforcement actions and mitigation requirements imposed by any entity under North Dakota statutory law, including N.D.C.C. ch. 4.1-47.
17. OPERATOR may cut or trim trees and shrubs, but only to the extent they interfere with or endanger the operation or maintenance of the Facility.
18. OPERATOR shall maintain the natural water flow and drainage.
19. OPERATOR shall take necessary precautions to prevent fires. In the event of a fire caused by the OPERATOR or its agent, OPERATOR shall compensate the OWNER's surface tenant(s)

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for their losses including forage, crop and any other losses; and shall compensate OWNER for any loss it suffers due to the fire.

20. OPERATOR shall conduct all activities associated with the (Type of Structure) in a manner that avoids the degradation of air, land, and water quality and that protects the area's visual resources.

21. OWNER reserves the right to use the easement area and to allow others to use the easement area for purposes compatible with OPERATOR's use. If someone other than OWNER uses the easement area in a manner inconsistent with OPERATOR's use, OWNER is not liable or responsible.

22. Through this easement OPERATOR is not acquiring any subsurface or mineral interest other than those explicitly conveyed by this easement. Subsurface and Mineral interests include, but are not limited to pore space other than that subject to this easement, oil, gas, coal, water, cement materials, sodium sulfate, sand and gravel, scoria, road material, building stone, chemical substances, metallic ores, uranium ores, or colloidal clays or other clays. If any subsurface or mineral interest is or will likely be excluded from mining or development because of the presence of this easement or the (Type of Structure) allowed by this easement, or if the location of the easement and (Type of Structure) interferes or will likely interfere with the mining or development of subsurface interests outside of the easement area, OWNER will give OPERATOR at least sixty (60) days written notice of the conflict between this easement and OWNER's right to mine and develop subsurface interests. At the end of the sixty day period OPERATOR must either pay OWNER the amount of lost royalties as determined by OWNER for the damages suffered because of OWNER's inability to mine or develop subsurface interests, or to benefit from their mining or development, or OPERATOR must agree to relocate the easement and the (Type of Structure) to another location within the tract, provided OWNER determines that a suitable substitute location exists on the tract. If OPERATOR selects relocation and if OWNER agrees that a suitable substitute location exists, this easement will be revised to describe the easement's new location and OPERATOR will move all structures and other physical features of the easement to the new location. Relocation does not entitle OWNER to additional compensation but OPERATOR must bear all relocation costs. OPERATOR must promptly complete relocation.

23. The OPERATOR agrees to defend, indemnify, and hold harmless Lessor from any damages to the property or person or to claims by any person that are a direct result of the OPERATOR'S use of the easement and easement area. Notwithstanding the foregoing, such indemnity/hold harmless obligation excludes (i) any claim or cause of action, or alleged or threatened claim or cause of action, damage, judgment, interest, penalty or other loss arising entirely from the negligence or intentional acts of OWNER or OWNER's agents, invitees, or licensees; or third parties, and (ii) any claim for exemplary, punitive, special or consequential damages claimed by OWNER. OPERATOR agrees to defend, indemnify and hold harmless OWNER, its family members, members, shareholders, directors, managers, partners, officers, employees, agents and contractors (the Indemnified Parties) from and against, and shall promptly reimburse each Indemnified Party with respect to any claim, investigation, demand, administrative or court proceeding, or cause of action, including any actual loss, cost, expense, liability, fine, penalty,



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fee, or damage incurred or suffered by the Indemnified Party (including reasonable fees and expenses of attorneys, technical experts and expert witnesses, court costs and other out-of-pocket expenses) and resulting from OPERATORS' breach of this Agreement, OPERATORS' violation of any law, rule or regulation, OPERATORS' negligence or willful misconduct, or any act of OPERATOR causing a loss to OWNER and arising out of or related to OPERATORS' operations on the Property. Neither the coverage nor the limits of insurance required by this Agreement shall in any way restrict the foregoing indemnity obligation.

24. The only use to which this easement may be put is for operations reasonably necessary for Carbon Dioxide geologic storage purposes as defined in the Pore Space Lease, and therefore, it may not be used for any other purpose, such as, and including but not limited to, injection, processing, compression, transportation or treatment of any substances other than Carbon Dioxide as defined in the Pore Space Lease. This easement will remain in effect for so long as Carbon Dioxide geologic storage injection operations continue at the Facilities, but in no event after Termination of the Pore Space Lease Agreement.

25. Any fixtures, structures, installations or facilities constructed or installed by OPERATOR, are the property of OPERATOR and may be removed by OPERATOR at any time.

OPERATOR shall remove all Facilities, both above ground and underground, from the easement area when the easement is abandoned or in any other way terminated, unless authorized to do otherwise in writing by OWNER. If a pipeline is to be abandoned in place, the following minimum requirements will apply: The pipeline must be disconnected and physically isolated from any operating facility or other pipeline(s), any pipeline segments coming to the surface must be cut off no lower than 48 inches below the surface, purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluids, remove cathodic protection from the pipeline, permanently plug or cap all open ends by mechanical or welded means and document the abandonment procedure with written notes containing methods, dates, persons, companies and pictures. Additionally, OPERATOR will provide OWNER a release of easement for recording, restore all areas of the easement area and any other area disturbed, occupied, or used by OPERATOR, remediate any contaminants related to the Facility, and restore the surface to its original condition and production pursuant to the standards herein.

26. OPERATOR will prevent the filing of any construction liens, and all other liens, resulting from its activities on the Property. If any liens are filed on the above-described Property because of OPERATOR's activities, OPERATOR will, at its own expense, provide a bond in the amount of any lien or provide other security as required by North Dakota Century Code Chapter 35-21 or other law as necessary to provide clear title to OWNER immediately upon recordation of any lien.

27. This easement shall be a covenant running with the land and shall be binding on the heirs, successors, and assigns of the parties hereto.

28. This easement is subject to all existing easements and nothing in this easement supersedes any rights previously granted.

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29. OWNER neither warrants nor agrees to defend title to the easement area.

30. This easement is also subject to the conditions in Exhibits "A" Survey Plat and Written Narrative, "B" Soil Reservation and Reclamation Requirements & "C" Native Grass Seeding Specifications which are attached and made a part of this easement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022, at Bismarck, North Dakota.

\_\_\_\_\_  
OWNER:  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF NORTH DAKOTA )  
\_\_\_\_\_) ss.  
COUNTY OF BURLEIGH )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_, known to me to be the person who executed this instrument and acknowledged to me that he executed the same.

\_\_\_\_\_  
( S E A L ) Notary Public

\_\_\_\_\_  
OPERATOR:  
\_\_\_\_\_  
**Summit Carbon Solutions, LLC**

\_\_\_\_\_  
(signature) On Behalf of **Summit Carbon Solutions, LLC**

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_ (title), acting on behalf of **Summit Carbon Solutions, LLC**, known to me to be the person who executed this instrument and acknowledged to me that he executed the same.

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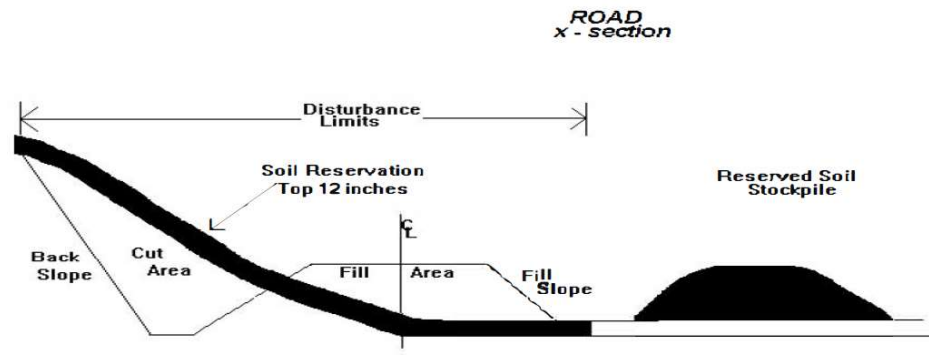
Notary Public

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EASEMENT: LINEAR EXHIBIT "A"

[SURVEY PLAT TO BE PROVIDED]

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**EASEMENT: LINEAR EXHIBIT "B"****SOIL RESERVATION AND RECLAMATION SPECIFICATIONS****REQUIRED METHOD FOR SURFACE FACILITIES**

Prior to construction or maintenance of the herein authorized easement area the top twelve (12) inches of soil shall be reserved and stockpiled from all areas to be disturbed, including the facility location site, fillslope and backslope areas, as shown above, and all other areas subject to topsoil and subsoil mixing. The reserved soil shall be stockpiled such that wind and water erosion are minimized. Following soil reservation, cut and fill operations can proceed. If the facility site will be permanent, then all or a portion of the reserved soil shall be respread as needed to stabilize facility cut and fill slopes. Structures (i.e., culverts, finger dikes, etc.) must be added to assure proper drainage and to stabilize erosion. All disturbed areas must be seeded to a native grass seed mixture found on Exhibit "C" attached.

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EASEMENT: LINEAR EXHIBIT "C"NATIVE GRASS SEEDING SPECIFICATIONS

<u>Species</u>	<u>lbs.</u> <u>PLS*/acre</u>
<u>Western wheatgrass</u>	<u>8</u>
<u>Slender wheatgrass</u>	<u>5</u>
<u>Green needlegrass</u>	<u>4</u>
<u>Side-oats grama</u>	<u>2</u>
	<u>19</u>

\*PLS - Pure Live Seed (based on 50 PLS/sq. feet)

1. The seed bed should be firmly packed (footprints left in the soil should be less than 1/2 inch deep).
2. An early spring seeding (before May 24th) is preferred. A dormant fall seeding (after October 20th) is acceptable.
3. A cover crop of oats at 10 lbs. PLS/acre must be seeded on the disturbed area.
4. A drill designed specifically for native grass seeding will give the best seeding results. The seed should be planted at a depth of 1/2 to 1 inch. Precaution must be taken not to plant the seed too deeply in the soil or poor germination will result.
5. On areas where equipment cannot be used, broadcast seed and rake or drag to cover seed. Where seed is broadcast, double the seeding rate.
6. Use only North Dakota certified seed.

**Caution:** Be sure to clean out the drill before seeding to avoid any contamination with smooth brome grass or crested wheatgrass that may remain in the drill from previous use on private land. These are invasive grasses in native prairie and are not allowed on school trust lands. Contamination with or use of crested wheatgrass or smooth brome will result in the applicant being required to spray out the grass and reseed with the above native grass seed mixture. Sweet clover and alfalfa are also not allowed – only the above native grass seed mixture may be used for revegetation on school trust land.

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**EXHIBIT F**

**CONSIDERATION SCHEDULE FOR EASEMENTS**

<u>Facility Type (1)</u>	<u>Description</u>	<u>Easement Type</u>	<u>Easement Width/Area</u>	<u>Easement Consideration (2), (3)</u>	<u>Per</u>	<u>Annual Payment (4)</u>	<u>Payment Frequency</u>
<u>Pipeline</u>	<u>One pipeline 8" diameter or below</u>	<u>Linear</u>	<u>50'</u>	<u>\$350.00</u>	<u>Rod(16.5')</u>	<u>None</u>	<u>Once</u>
<u>Pipeline</u>	<u>One pipeline above 8" diameter or below 20" diameter</u>	<u>Linear</u>	<u>50'</u>	<u>\$400.00</u>	<u>Rod(16.5')</u>	<u>None</u>	<u>Once</u>
<u>Pipeline</u>	<u>One pipeline above 20" diameter pipeline</u>	<u>Linear</u>	<u>50'</u>	<u>\$450.00</u>	<u>Rod(16.5')</u>	<u>None</u>	<u>Once</u>
<u>Pipeline Valve Above</u>	<u>One single valve above grade</u>	<u>Linear</u>	<u>point (<math>\leq .01</math> acre)</u>	<u>\$3,500.00</u>	<u>Valve</u>	<u>None</u>	<u>Once</u>
<u>Pipeline Valve Several Above</u>	<u>Several valves at one common location above grade</u>	<u>Facility</u>	<u>acre (<math>&gt;.01 &lt;1.0</math> acre)</u>	<u>\$10,000.00</u>	<u>Valve Site</u>	<u>None</u>	<u>Once</u>
<u>Cathodic Bed</u>	<u>One bed location</u>	<u>Linear</u>	<u>point (<math>&lt;.06</math> acre)</u>	<u>\$3,500.00</u>	<u>Bed</u>	<u>None</u>	<u>Once</u>
<u>Below Grade Electric</u>	<u>One distribution line less than 69 kv below grade</u>	<u>Linear</u>	<u>20'</u>	<u>\$10.00</u>	<u>Rod(16.5')</u>	<u>None</u>	<u>Once</u>
<u>Above Grade Electric</u>	<u>One distribution line less than 69 kv above grade</u>	<u>Linear</u>	<u>50'</u>	<u>\$10.00</u>	<u>Rod(16.5')</u>	<u>None</u>	<u>Once</u>
<u>Electric Transmission</u>	<u>One transmission line 69 kv or larger</u>	<u>Linear</u>	<u>100'</u>	<u>\$160.00</u>	<u>Rod(16.5')</u>	<u>None</u>	<u>Once</u>
<u>Below Grade Communications</u>	<u>One fiber optic, or copper, or other cable</u>	<u>Linear</u>	<u>20'</u>	<u>\$10.00</u>	<u>Rod(16.5')</u>	<u>None</u>	<u>Once</u>
<u>Site (well, building, etc.)</u>	<u>One facility per surface occupancy site</u>	<u>Facility</u>	<u>acres</u>	<u>\$5,000.00</u>	<u>Acre</u>	<u>\$500/acre</u>	<u>Once/Annual</u>
<u>Road</u>	<u>One facility per surface occupancy site</u>	<u>Facility</u>	<u>acres</u>	<u>\$5,000.00</u>	<u>Acre</u>	<u>\$500/acre</u>	<u>Once/Annual</u>

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**CONSIDERATION SCHEDULE**

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<u>Tower or Monitor well (communication, air or water monitor)</u>	<u>One facility per surface occupancy site</u>	<u>Facility</u>	<u>&lt;.25 acre</u>	<u>\$1,250.00</u>	<u>Site</u>	<u>\$1,250.00</u>	<u>Once/Annual</u>
<u>Common Location Site</u>	<u>Several facilities on one common site</u>	<u>Facility</u>	<u>acres</u>	<u>\$5,000.00</u>	<u>Acre</u>	<u>\$500/acre</u>	<u>Once/Annual</u>
<u>Damages to crops, cropland or pastureland or other land (5)</u>	<u>Damage caused by non-easement activities</u>	<u>None</u>	<u>acres</u>	<u>\$1,000.00</u>	<u>Acre</u>	<u>None</u>	<u>Once</u>
<u>Water Use Access (6)</u>	<u>Lessee's access to use of Lessor's property for water</u>	<u>Facility</u>	<u>acres</u>	<u>\$5,000.00</u>	<u>Acre</u>	<u>Negotiated</u>	<u>Negotiated</u>

(1): Any Facilities not listed on this schedule must be added to the facility type that is most similar and processed as such.

(2): The Easement Consideration covers and includes damage to crops, hayland, and pasture for one growing season if the Owner is the one planting the crops, haying the land, and grazing the pasture, but does not cover losses to a surface tenant of the Owner if the tenants is the one planting the corps, haying the land, or grazing the pasture.

(3): The Easement Consideration amounts will increase 2% annually with the beginning date being the signing date of the Lease Option.

(4): The Annual Payment amounts will increase 2% annually with the beginning date being the signing date of the Lease Option.

(5): Damages paid by Lessee for crops, cropland, pasture or other land will be a minimum of \$1,000.00 per acre, but not less than \$1,000.00 per disturbance. This rate will also increase 2% annually with the beginning date being the signing date of the Lease Option

(6): The State of ND owns, manages and issues water permits for uses such as industrial uses. If Lessee receives a permit from the State and wishes to place a water well on Lessor's land the Lessee must first obtain a Facility Easement and pay the Lessor the per acre payment from the schedule for the location. Also, the Lessee must negotiate a per gallon or per acre feet water access payment with the Lessor.

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**CONSIDERATION SCHEDULE**

pg. 54





**Testimony of Adam Dunlop, Executive Vice President of Midwest Ag Energy**

**North Dakota Ethanol Producers Association**

**Opposition of SB 2122, 2209, 2228, 2317, and 2314**

**January 27, 2023**

Chairman Patten and members of the Senate Energy and Natural Resources committee,

I am Adam Dunlop, Executive Vice President of Midwest Ag Energy which owns and operates ethanol plants located in Underwood and Spiritwood. Midwest Ag Energy is a member of the North Dakota Ethanol Producers Association (NDEPA), which represents North Dakota's six ethanol plants, industry stakeholders and associated businesses. NDEPA is here today to oppose Senate Bills 2122, 2209, 2228, 2317, and 2314. These bills would be detrimental—and in some cases fatal—to the ethanol industry with respect to any future advancements in the carbon (CO<sub>2</sub>) markets. North Dakota's legislature has diligently invested immense resources in research and development to advance the CO<sub>2</sub> markets and opportunities in ND, and it has spent 15 years creating a legal, tax, and regulatory regime to encourage investment in the CO<sub>2</sub> markets. Each of these bills could unilaterally undo the very thoughtful and at times groundbreaking work you have invested in safe and permanent CO<sub>2</sub> storage.

North Dakota's ethanol industry contributes nearly \$1.7 billion annually to the state's economy and provides thousands of direct and indirect jobs. Thanks to North Dakota's innovative private sector and supportive state government, the state's ethanol production capacity is 550 million gallons per year, which is more than five times the production a decade ago. The plants produce 2.4 million tons of CO<sub>2</sub> annually. Red Trail Energy in Richardton has been capturing and storing the CO<sub>2</sub> it produces for about a year. They were the first Class VI injection well approved by a state regulator with EPA primacy. Midwest Ag Energy's Blue Flint plant has been working on its CO<sub>2</sub> project for the past several years and will have an operational CO<sub>2</sub> project this summer. Tharaldson Ethanol has signed onto the Summit Carbon Solutions pipeline which will be able to capture CO<sub>2</sub> from various Midwest ethanol plants and store it in central North Dakota.

There is a tremendous advantage to capturing and storing North Dakota's CO<sub>2</sub> emitted from the ethanol plants. There are a couple of powerful economic factors at play: (1) the ability to capture more revenue with low-carbon ethanol and (2) 45Q tax credits. The ethanol produced from these plants can be sold to developed and emerging low carbon fuels markets that are willing to pay a premium for low carbon fuel. Low carbon ethanol is often sold at a premium—around 20-30 cents more a gallon. Assuming a \$.20 lift in every gallon ethanol, at 550 million gallons of production in the state, assuming all CO<sub>2</sub> from ND's ethanol plants be permanently stored, that would amount to an additional \$110M (550M X \$.20) in increased annual revenue. That revenue supports North Dakota's agriculture economy. Those who permanently store carbon can also utilize the 45Q tax credit which is currently valued at \$85/ton. ND Ethanol plants produce 2.4 million tons CO<sub>2</sub> annually, the 45Q tax credit on this volume could generate \$204M per year in federal tax credits taken directly to the plant's bottom line (2.4M x \$85). The 45Q tax credit is available for 12 years. Also, lower carbon-intensity scores at a plant enables it to pay a higher price for corn in their area, which translates directly into a better economy for our farmers in ND. These are game-changing opportunities for ND agriculture.

With regard to the eminent domain bills, Senate Bill 2212 completely repeals common carrier status for CO<sub>2</sub> projects, Senate Bill 2209 creates an 85% threshold for eminent domain and gives county commissioners authority to set higher percentages, and Senate Bill 2314 gives the Public Service Commission (PSC) authority to determine common carrier status and eminent domain limitations. Our industry work extremely hard to be sure that landowners are treated fairly and appropriately- they are our suppliers for corn and customers for distillers grains. We all share benefits if we're able to successfully build and operate these projects. Eminent domain, simply put, is not a desired tool, but vocal small minorities of protestors should not be given veto power over any linear infrastructure that allows our state to compete and prosper.

Similarly, with regard to the amalgamation bills, Senate Bill 2228 repeals amalgamation for CO<sub>2</sub> storage, and Senate Bill 2317 creates an 85% threshold for amalgamation. Similar to eminent domain, NDEPA understands that amalgamation is never the first mode of action, but it is a tool that must be utilized at times avoid property rights of the minority outweighing the property rights of the majority on project development. Again, the industry aims for 100% consent from landowners on these projects but there are instances that amalgamation is the voice of the majority. Significantly raising this threshold would absolutely hinder all CO<sub>2</sub> projects across North Dakota.

Addressing a carbon-constrained future is a critical public purpose. Our two major industries, agriculture and energy, cannot survive and thrive without them. Additional, hindering projects for the ethanol industry would put the 550 million gallons of ethanol produced by home grown corn in North Dakota's at a disadvantage on the national level. Thank you for your time today and on behalf of NDEPA I respectfully urge a 'Do Not Pass' on SB 2212, 2209, 2228, 2317, and 2314.

Honorable Chairman Patten & members of the Energy and Natural Resources committee,

Thank you for the opportunity to testify on SB 2228. I am a fourth-generation landowner in Oliver County within the area of a proposed storage unit where a large majority of the property owners are in favor of utilizing our pore space for CO2 storage. SB 2228 threatens our property rights. It is not feasible to get 100% consent. Additionally, it opens up the opportunity for outside interests to stop our state's economic development by simply owning a tiny percentage of the land. The property rights of the majority need to be considered. It is not right for the minority to outweigh the majority. I ask you to please vote no on this bill. Thank you for your consideration.

Sincerely,

Jessica Pulver Biesterfeld

My name is Jason Pulver, I live in Hazen and bought the land homesteaded by my great grandfather and other lands owned by my family for decades south of Beulah in Oliver County.

Chairman and Committee Members, I oppose Senate Bill 2228 which would require 100% consent among pore space owners as a permit requirement.

It is impossible to get 100% of people to agree on anything, especially the number required when multiple sections of land are involved. On top of getting everyone to agree, I can attest as a research landman over the past 15 years that even surface title can be messy with some tracts having multiple owners across many states along with estates that haven't been cleaned up or settled for decades, making it nearly impossible to obtain full consent in those situations.

As a landowner, I want to exercise my right to monetize my pore space which can be done while still being able to utilize my surface as it always has been, while also benefitting the agriculture, coal and oil & gas industries in the long term.

Requiring 100% consent for a multiple section project either serves to shut it down fully or to only allow one or a few large contiguous landowners to monetize their pore space while leaving behind smaller landowners.

It is for these reasons that I oppose the enactment of Senate Bill 2228 and ask you to forward a **DO NOT PASS** recommendation. Thank you.

Mr. Chairman, and members of the Energy and Natural Resources Committee, my name is Kathy Sardelli from Hebron. My husband, David, and I operate our 5th generation farm and ranch in Mercer County. We are writing in favor of Senate Bill 2228.

We are proud North Dakota 5th generation farmers and ranchers...the stewards of the land my family homesteaded. We are passionate about our responsibility to ensure that this land that we have been blessed to care for is maintained and passed onto future generations the same or better under our care.

No one is more committed to this responsibility. No one is better suited for this responsibility. And under no circumstances should it be possible for us to unwillingly lose our land at the whim of a private for-profit company. We could not be more steadfast in our belief that our right to own and manage our land must be protected without exception by the laws of this great state of North Dakota.

The heart of the matter is this...North Dakota Century Code 38-22 includes provisions that are not aligned with the protection of our private land ownership rights. Amalgamating property interests (section 38-22-10) provides what we see as a 'free pass' for our land to be forcefully taken from us for the use and financial benefit of a for-profit private business. This is simply wrong and sets an incredibly dangerous precedent for the rights of landowners in North Dakota for the future. Section 38-22-10 must be repealed as suggested in SB 2228.

With respect to our support for the suggested amendments to 38-22-08:

The threat of eminent domain and the amalgamation of property interests is an incredibly powerful weapon in the toolkit of a landman or storage operator. It establishes a very low bar for the true performance of cooperation and collaboration with the landowner. For example, our experience to date with a storage operator, Summit Carbon Solutions, has not been one where the operator has made an effort to collaborate. Rather, the threat of eminent domain and amalgamation was used very early in the conversations as a 'negotiation' tool.

It is our opinion that the standard for the performance of collaboration on behalf of both the operator and the landowner should be expected to be at the very highest level. We support the fact that with an honest effort and a partnership mentality for real collaboration on the part of a storage operator, consent of all persons who own the storage reservoir's pore space is possible and should be the standard.

We are committed to protecting our land for future generations. Our biggest fear and the burden we carry is that WE did not exercise due diligence...that we became complacent. That we didn't do all that we could to right a wrong. That our lack of stewardship will be considered one of the greatest sins of our generation by our children, and their children, and their children after that.

We ask that this committee approve SB 2228 to right a wrong and protect the private property rights of North Dakota citizens.

Thank you for the opportunity to share our testimony with you today.

Kathy and David Sardelli  
6590 29th Street  
Hebron, ND 58638

I am in support of this bill. The proposed route of this pipeline is within 1/2 a mile of my home and comes within several feet of other homes in Apple Creek township. I feel this is much too close due to the hazards associated with this or any other type of pipeline. I support this bill because I do not feel a landowner should be forced to have this on their property.

FYI: The bill hearing for SB 2228 is scheduled for tomorrow morning at 10a Central. This bill amends the bill that allows for Eminent Domain with only 60% of pore space leased.

Ideally, you can both submit testimony which must be submitted before 8am tomorrow morning and attend the meeting, either in person or through the virtual link. If attending, the room for the meeting keeps changing, but currently it is scheduled for J216, second floor judicial wing. Attached is the location of the meeting. See attached for map.

[https://ndlegis.gov/assembly/68-2023/regular/bill-overview/bo2228.html?bill\\_year=2023&bill\\_number=2228](https://ndlegis.gov/assembly/68-2023/regular/bill-overview/bo2228.html?bill_year=2023&bill_number=2228)

If you want to watch live or recorded, go to this link:

[North Dakota Legislative Branch Video \(ndlegis.gov\)](#)

Find the Senate Energy and Natural Resources and click on the link next to it like attached:

Your testimony can be as simple as providing your name, and that you are in support of Senate bill SB 2228. Of course, you can definitely elaborate as to why, if you are land owner, etc.

Mark



To: The North Dakota State Senate

From: Verda Draeb, a Mercer county land owner with land in the summit carbon sequestering area

Re: SB 2228

- I am very concerned about the fact that 60% of the landowners can sign the lease agreement with Summit Carbon and allow Summit Carbon to confiscate the remaining 40% of the private land to benefit their project. This is a privately owned company and there is no indication that there is a benefit to the public. By allowing this company to take our land, it appears to me that we are bordering on the edge of communism.
- There is no proof that injecting CO2 underground will not eventually leach into our water sources and soil. Under my land is a large shallow aquifer and I have a pumping well and artesian well utilizing this water for livestock. Should this be contaminated, it would destroy a farming and ranching operation.
- With the high technological skills in our country, it is probable in a few years that a discovery will be made to effectively utilize the CO2 in an ecologically beneficial manner. Once the CO2 is injected into the pore space, it can never be retrieved. Note, CO2 is utilized by plant life and piping the excess CO2 to large cities would encourage the growth of vegetation and in turn reduce air pollution.
- With the increase utilization of electric vehicles, it is possible that ethanol which produces carbon dioxide will no longer be needed.

SB2228 Testimony (In Favor Of)

Dear Chairman and Senators,

My name is Chad Gilmer, and I am thankful for the opportunity to write this testimonial. My hope is that it provides you with additional perspective that I think is important to consider with this bill proposal. The main focus for this testimonial is to highlight my experience with Summit Carbon Solutions, and how the current legislation allows for predatory business development from large firms and companies at the expense of landowner's private property and rights. I believe the original law was drafted in good faith, but as times change and new technologies emerge, such as carbon capture, these need to be revisited to ensure there is a balance between growing business and the interests of North Dakota landowners.

My wife, Lauren Somers Gilmer, is part of a family that has proudly owned land in North Dakota for over 112 years. Her aunt & uncle, and grandma live on the land right next to the section that she owns. I am proud and honored to be a part of this family, and admire their hard work and dedication for how well they take care of the land. My wife and I do not currently live on the land in North Dakota, but we still invest our own time, money, and sweat into the property. Recently, we flew back from Texas and spent a significant amount of time planting around 300 – 400 trees to start building a new windbreak for the property. We understand that as North Dakota landowners, it is important to do our part in preserving the land for future generations. The hard work that we put into maintaining the land is at risk with current legislation, and this bill aims to make sure that we can continue to exercise our constitutional rights as private landowners.

I currently work in the oil & gas industry, where contracts for mineral rights and saltwater disposal wells with landowners are common place, such as in the Bakken formation in North Dakota. More often than not these agreements are good for business, and also good for the landowners. Of course, not everybody gets 100% of what they want, but generally speaking there is a reasonable amount of good faith between both parties to be respectful of the interests at hand. In all cases, companies who use the land for oil & gas extraction or water disposal are required to post bonds for reclamation and return the land to the original state after they are finished using it. They need to abide by noise and light pollution laws and must maintain roads they use after driving heavy equipment. They are bound by law to protect and maintain the land for the landowner's future use, and landowners are compensated justly for any decrease in property value. Since the companies are working on the landowner's private property, the landowners can dictate what happens through proper legal proceedings and common industry practice. This scenario represents a common business practice today with industry standards that help promote economic growth and protect landowners private property.

This brings me to the scenario relating to carbon capture storage and landowner rights in North Dakota, and some of my personal experience over the last 2 years. When we were originally approached by Summit with a contract proposal, I was shocked to see what they had put down, or more specifically what was not on paper. In my opinion, this document was just downright disrespectful to landowners. I have read hundreds of legal documents and contracts, and I have never seen anything like this. For anyone who has read any reasonable business contract, this was a document you put in the paper shredder, and never engage with that party again. Backed by millions of wall street dollars, this is a classic example of predatory business practice where wall street money tries to take advantage of something they do not own, OUR LAND. In short, Summit offered a small lump sum payment, and a minuscule royalty fee in exchange for free use of the land, both above ground and below ground with no

## SB2228 Testimony (In Favor Of)

restrictions to access at all, FOR UP TO 40 YEARS!!! I was deeply saddened to hear that other nearby landowners, due to their lack of legal knowledge and lack of familiarity with carbon capture, had already signed up. They unfortunately signed away their land, without knowing the true value, and more importantly without recognizing their constitutional right as private property owners. To no surprise, Summit has been specifically targeting individuals who may not be well educated in legal contracts, in an attempt to reach the low 60% amalgamation threshold where they can then force the rest of the landowners to do what they want. In the bullet points below I summarize some of the legal agreements that people have agreed to without being properly educated. I know with certainty that if given a second chance to fully understand what Summit was offering, these landowners would never have placed their highly valuable land in the jaws of corporate sharks.

- Summit would be allowed to "abandon in place" all infrastructure of any sort both above ground and below ground at any point in time throughout the contract on the property.
- Summit would be allowed to start building infrastructure on your land before terms of compensation have been fully agreed.
- They would be allowed to conduct seismic tests with disregard to water sources, crops and livestock.
- There was no mention of reclamation anywhere for damaged caused to the land, property buildings, or aquifers in the contract.
- Summit retained the right to say no to any other use of the surface land, including farming and use of livestock that the land had already been used for.
- Summit could effectively take control of our own surface land for other business venture if they so choose.

So why would a company like Summit Carbon Solutions blatantly try and take advantage of landowners? Well because they know how valuable our land is, and with current legislation in place they have an opportunity to capitalize and take advantage amalgamation, and of unconstitutional legislation such as NDCC 38-22-10. Amalgamation is at play because if they can trick enough people into taking a quick payday, they then can force the rest of the private property landowners into doing whatever they want without their consent. They also know that they have high ranking government officials on their side who are promoting this as a great economic opportunity, at the expenses of private landowners, despite this being unconstitutional. So, in reality the problem is two-fold. Big businesses, and government officials working together and willing to turn a blind eye to unconstitutional practices and legislation with respect to private property and constitutionally protected reasonable landowner rights.

This bill proposal brings to you the American spirit and way of life in one of it's purest forms. Fighting for the freedoms of landowners and the people who take care of what is rightfully theirs, in the face of the few who think they have the right to take our land.

Trying to negotiate with Summit has been a colossal waste of time, as they are just trying to take advantage of the unconstitutional laws that are currently place. We received a lot of lip service, and a lot of empty promises that they would come back to the negotiating table. Of course, they understand why we are upset and want to change the lease, if Summit was in our shoes they would never in a million years sign the lease they presented to us. They only have returned to the negotiating table because of the introduction of this morally and ethically sound legislative proposal that protects landowners, and because their business proposal depends on the land of North Dakota families. Unfortunately, the

## SB2228 Testimony (In Favor Of)

reality is that this may not be the only company in North Dakota applying this predatory business practice. North Dakota is positioned very uniquely for carbon capture, and especially the land in Mercer and Oliver counties. The land sits on a geological formation that has excellent conditions for CO<sub>2</sub> storage. These types of opportunities and decisions about the land use should be afforded to the people who own it, not big businesses who try and muscle their way into using our property.

I also want to be clear that we are not against business development and new technology, as we recognize the many benefits that it may bring down the road in terms of prosperity and development. Our family ancestors would not have settled on this land without its natural resources, and are a big reason why so many families still live here today. Although untraditional, pore space is also a natural resource (maybe a natural formation) with value for our families and future generations, and we are fighting to protect what is rightfully below our land. As it has been for over a hundred years set by the US constitution, private property owners have rights above and below ground, and we should retain the right in all scenarios to decide who can use the land and for what purpose.

My concern with the current legislation is that it leads to precarious situations such as today for thousands of North Dakota residents. Where large firms such as Summit Carbon Solutions are able to identify highly unconstitutional and unethical ways of carrying out business at the expense of the community and families that have lived there for over 100 years. A large company can easily target landowners who may not be familiar with legal contracts, carbon capture technology, pore space, and may have had a tough prior year in livestock or farming due to unforeseen circumstances. These large companies purposefully seek out these people with a promise of a quick pay day, tie up their land for decades to come, and don't tell you the real value. The bill before you today aims to prioritize the people who live here and take care of the land, and not the newly formed company trying to make a quick buck off new tax credits and new technology, and who will just as quickly abandon these infrastructure projects as things start to go south. The landowners want to be a part of the solution for new technologies such as carbon capture and storage, and we are only asking for a level playing field. Most people are not opposed to new business, as long we retain our constitutional rights to private property.

Working in oil and gas, I know carbon capture is coming, and it is only a matter of time before implementation is widespread. North Dakota has the opportunity to develop this in the right way for economic purposes, while also providing new opportunities to many hardworking families that have owned land for over a century. As elected officials of the people, it is your civic duty to represent and uphold the concerns brought forth to you in the testimonials. It is also your responsibility to protect the constitutional rights of private property for current North Dakota landowners. Most of us are not bankrolled by wall street like Summit Carbon Solutions, and getting this bill right the first time can avoid long and lengthy court battles that would put extra pressure and stress on countless families over the land they call home.

Thank you for your time in reading this testimonial, and I hope you consider enacting legislation in a way that enables economic development, without completely disregarding landowner's rights to their own private property. These families have taken great pride in preserving the North Dakota land for past and future generations.

Sincerely,

SB2228 Testimony (In Favor Of)

Chad Gilmer, husband of North Dakota land owner Lauren Somers Gilmer.



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January 26, 2023

RE: SB 2228 – Energy and Natural Resources Committee Testimony (In Favor Of)

Chairman and Committee Members:

My name is Scott T. Solem. I am an attorney with offices in Beulah and Hebron. I have practiced law for the better part of 30 years in Beulah and 20 years in Hebron. During that time, I have reviewed and negotiated on behalf of clients numerous energy leases. I suspect that I have reviewed more coal leases than any other attorney in North Dakota, with the exception of the attorney's for the coal companies. I have reviewed and negotiated several hundred oil and gas leases, dozens of wind farm leases, and more recently solar energy leases. In the past year I have also had opportunities to review carbon sequestration leases being offered in Mercer and Oliver Counties. These leases are extremely one sided in favor of the developer, requiring full surface use and access without any pre-determined terms and conditions for easements such as location, restoration, reclamation, financial security, and compensation. Similar terms and conditions are found in virtually every other type of energy related leases currently offered in the other aforementioned energy sectors.

I and Bismarck attorney, Derrick Braaten, currently represent several private property owners who farm and ranch in Mercer, Oliver, and Morton County. The lease that they have been offered provides 1/5<sup>th</sup> of the liability and insurance coverage that the Project Tundra provides landowners in their lease and does not provide landowners any access to pollution insurance coverage. This lease further takes all of the private landowners pore space layers, whether required for their injection well permit or not. It does not provide for reimbursement of attorney's fees for landowners. It has overbearing indemnity, representation, and warranty clauses. And it fails to provide market compensation for landowners which we've estimated at 3 to 9 times less than other disposal facilities currently under development in several other states.

The low 60% threshold for amalgamation allows the developer to not have to negotiate in good faith with private landowners once the low threshold has been achieved. Attorney Braaten and I have endeavored to develop a fair and reasonable lease agreement which provides basic landowner rights protections that you would see in any other energy related lease of this nature. A redline copy of this proposed lease, which Kurt Swenson has already provided you a copy of, was provided to the developers on 1/25/2022. Despite repeated efforts to engage in good faith discussion over the requested amendments to their proposed

lease, it was not until this SB 2228 was circulated that the developer reached out to my landowners group and Mr. Braaten to start discussions on amended lease terms.

The current 60% minimum threshold for amalgamation does not encourage arm's length and good faith negotiations between carbon sequestration developers and private property owners. To the contrary, it does just the opposite. The proposed amendment as presented in SB 2228 if passed will have the effect of encouraging good faith negotiations with developers and private property owners which will in turn result in fair and reasonable lease terms similar to those that we see in coal leases, oil and gas leases, wind energy leases, and solar energy leases. I encourage a "Do-Pass" on Senate Bill 2228.

Respectfully submitted,

SCOTT T. SOLEM  
Attorney at Law



# RED TRAIL ENERGY, LLC

“Our Farms, Our Fuel, Our Future”

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PO Box 11 Richardton, ND 58652 (701)-974-3308 FAX (701)-974-3309

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## Testimony of Dave Burns, Regulatory and Compliance Manager

Red Trail Energy

Opposition of SB 2212 and 2228

January 27, 2023

Chairman Patten and members of the Senate Energy and Natural Resources committee,

I am Dave Burns, CCS Regulatory and Compliance Manager with Red Trail Energy (Red Trail) located in Richardton. I am here representing Red Trail Energy in place of Chief Executive Officer Gerald Bachmeier who was unable to attend today. Red Trail is here today to indicate opposition for Senate Bills 2212 and 2228. These bills would be detrimental to Red Trail and its current and future advancement in low carbon fuel markets.

Red Trail Energy began producing ethanol in 2007 and now employs 48 personnel with an annual payroll of \$4 million. Originally constructed as one of the first coal-fired ethanol plants in the nation, Red Trail was converted to natural gas in 2015. Red Trail produces 59-64 million gallons of ethanol, using 21-23 million bushels of corn annually. The plant will generate 2.8 gallons of ethanol from every bushel of corn. Coproducts produced by the plant include 125,000 tons of dried distillers grain, 80,000 tons of modified-wet cake and 18 million pounds of corn oil annually. We are currently injecting roughly 500 tons of carbon (CO<sub>2</sub>) per day. We participate in low carbon fuel standards in Oregon and British Columbia and are applying for a pathway in California.

On June 16, 2022 Red Trail celebrated a historic moment in North Dakota history of becoming the first facility permitted under state primacy to capture and store CO<sub>2</sub>. Red Trail is continually looking for other ways to lower its carbon intensity (CI) score. We have future plans to implement several groundbreaking technologies that would allow Red Trail to capture and store an additional 200,000 tons of CO<sub>2</sub> per year. These plans would require Red Trail to expand its amalgamated area to accommodate these new technologies.

Senate Bill 2212 completely repeals common carrier status for CO<sub>2</sub> projects. Senate Bill 2228 repeals amalgamation for CO<sub>2</sub> projects. Red Trail values its landowners and understands that amalgamation is never the first mode of action, but it is a tool that must be utilized at times for the minority shouldn't be able to out voice the majority on project development.



Bills such as SB 2212 and 2228 would inhibit future expansion for Red Trail and the other regional ethanol plants by inhibiting implementation of new technologies; and could have consequences on existing projects. These bills will not only affect Red Trail but will dramatically affect the ethanol industry in the state. The proposed policy would be detrimental to any ethanol plant looking to get into lower carbon fuel markets and will put North Dakota's commodities at a disadvantage on a national level. Thank you for your time today and on behalf of Red Trail Energy I respectfully urge a 'Do Not Pass' on SB 2212 and 2228.

January 26<sup>th</sup>, 2023

To Whom This May Concern,

North Dakota stands at the precipice of some very large decisions as it pertains to the health and wellness of not only the environment, but its own citizens. Through groundbreaking work in Carbon Sequestration, the fuel as well as power industry are working hand in hand towards making not only North Dakota's emissions cleaner, but the worlds. As it stands, we are on the national stage with all states watching how we are to handle new green technology. Governor Doug Burgum recently stated, "North Dakota takes pride in being one of the most business-friendly states in the nation, and we continuously seek new ways to support entrepreneurs, innovators and emerging expanding businesses". He has been a man that has stood for the working class as well as green energy projects. Bill SB2228 would be a catastrophic blow to the green energy sector. As the industry evolves and matures, finding new and innovative ways to deal with our ever-increasing greenhouse gas emissions has to be the forefront of how ND does business. All eyes are on ND and how we plan to handle new green energy initiatives. I implore the members of the legislative session to reconsider this bill. Not only will this bill negatively affect future green energy projects for ND, it also negatively effects the working class family.

I come from a 3<sup>rd</sup> generation family of farmers and am no stranger to a hard day's work. The ethanol industry has given me a chance to not only provide and raise my family, it has also given thousands of peoples across the state a way to provide. From the ethanol sector, local farmers, seed companies and manufacturers, fertilizer companies, even the local main street USA that are still able to keep their lights on due to the foot traffic an ethanol plant brings to their local farming communities. I am nothing, if I'm not honest, rural North Dakota depends on the future of new green energy projects. I implore the legislation to consider how this bill will affect the local rural communities and the taxable income it brings to these areas. Help us show the rest of the world that North Dakota is ready to change the way the United States is to deal with our ever growing emissions issues and let us stand at the fore front of innovation. As Teddy Roosevelt once said, "I recognize the right and duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful use, the generations that come after us." By releasing our CO2 to atmosphere and not dealing with this greenhouse gas in a responsible fashion, we set future generations up to fail.

Thank you for your time and I hope you consider my testimony when it comes time to vote on Bill SB 2228

Best Regards,

Tyler Mock

Chairman Patten & members of the Energy and Natural Resources committee,

I support Carbon Capture and Sequestration as I feel it is vitally important to the future of North Dakota's two most important industries, agriculture and energy.

Summit Carbon Solutions is an innovation project which offers landowners an opportunity to develop their pore space as well as providing tax revenue for local government.

As a landowner in the project area, I believe Senate Bills 2209, 2213, 2212, 2228, 2317, and 2314 as well as House Bills 1384 and 1466 are short-sighted and interfere with my property rights. I urge you to vote NO on these bills.

Thank you for your consideration,  
Bill and Norma Breimeier, landowners

My name is Casey Voigt. I am a rancher from south of Zap.

I am opposed to Senate bill 2228.

It will take away the property rights of landowners. Why should a minority of 10% be able to tell the majority what they can, or cannot do, with their property?

SB 2228 requires 100% support. That is unrealistic. It is not possible to get 100% support on any project.

North Dakota's Legislative process requires a simple majority (50% plus 1) or in some cases a super majority (60%).

How many bills would be passed if 100% support was required?

People supporting SB 2228 are saying this bill supports property rights. That is simply not true. They are a minority wanting to take away the property rights of the majority.

Thank you for your time.

Sincerely,

Casey Voigt



January 27, 2023

Chairman Patten and Senate Energy and Natural Resources Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in opposition of Senate Bill 2228. The Lignite Energy Council consists of over 250 members representing lignite mines, electric utilities, independent power producers and contractor suppliers in the Upper Midwest. The lignite industry accounts for over 13,000 direct and indirect jobs, over \$5.4 billion in economic development and millions in state, county and local tax revenue.

For the past two decades, the Lignite Energy Council has worked with the legislature, state agencies and stakeholders to create a legal, tax, and regulatory framework to support development of carbon capture technology for the electric power that would position North Dakota to lead the nation in CO2 development. There is a long list of legislation that has been thoughtfully designed, debated and passed into law that includes conformity with federal laws, the fee structure at the North Dakota Industrial Commission, the long-term accountability for CO2 storage, Class VI primacy for pore space and the critically important state investments into research, and development to name a few policies that our industry has helped place into law.

We are pursuing this technology because it has the potential to create another top five industry in North Dakota, and to preserve and enhance the coal industry in the new carbon economy. We have pursued this path because ever tightening federal regulations around carbon emissions threaten the longevity of the lignite industry and we now have a tremendous opportunity to mitigate that risk. In North Dakota, we are blessed not only with an 800 year supply of our lignite natural resources, but we also have some of the best geology in the whole world for the underground storage of carbon emissions. This combination provides the tremendous opportunity to lower our carbon emissions while providing us with economic and regulatory certainty in the future that we will be able to continue to deliver affordable and reliable energy to the citizens of our state.

The language found in SB2228 creates additional risk for all potential future carbon capture projects and the economic growth they will bring. LEC submitted previous testimony laying out the historical timeline of North Dakota's work to incentivize and deploy new technologies in the energy sector. The incentives crafted over the past 20 years worked; they drew interest, capital and growth to our state while providing a pathway to the future for our industry. One of the differences between this great nation and others has been the certainty we offer to businesses. A quicksand industrial foundation obviously decreases confidence from investors and business owners, and when a state creates a business climate that attracts wealth and capital, and then changes the rules at halftime, the signal is sent to just not participate. This change is so dramatic it will simply end an industry—an industry that will produce jobs and opportunity while giving the lignite industry a lifeline to exist far into the future. And the manner in which this bill operates—by constraining the rights of private property owners to add their own labor and capital to property in order to create more wealth—is itself a violation of the principles of property rights that are the subject of concern.

This bill in particular jeopardizes the ability of private individuals to turn their property into wealth by requiring the consent of their neighbors in order to use their own property without restrictions. Frederic Bastiat once wrote that we don't own property because the laws allow it, but instead we have laws because we own property. The legislature has

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long taken the only equitable approach when property owners desires are incompatible with each other, which is to require more than a majority threshold. This bill also creates a unique opportunity for small groups or individuals to purchase property just to disrupt energy projects. This is not a “scare tactic”. Environmental groups in Idaho have purchased grazing rights to prevent cattle grazing. Another purchased oil and gas rights in Wyoming to prevent oil development. Another activist bought leases in Southern Utah. All with the aim of thwarting development. This bill would hand them a tool not just to derail a growing CO2 industry that can add billions of dollars and thousands of jobs to our economy, but will also be used by groups to end the lignite industry’s ability to continue to supply the region with electricity, handing radical green groups a victory under the policies of a state with 800 years of coal and generations of oil and gas underfoot.

We believe that the laws that have been carefully crafted in the Century Code should not be repealed or changed before they have the opportunity to work—or, in this case simply because they work, simply because they are attracting projects. We are proud of the community relations that our power plants and mines have built over the many decades that our industry has been in operation. Strong landowner relationships are the only way that these projects move forward and we have achieved high levels of landowner support while coexisting with the current amalgamation laws. The future of our economy depends on moving the commodities we produce to market through critical infrastructure. The CO2 economy will provide public goods through the reduction of regulatory risk for the energy industry, the development of value added products made from CO2 and the ability to supply CO2 for enhanced oil recovery to continue the petroleum production that provides over 50% of our state’s tax revenues.

For these reasons, the Lignite Energy Council opposes SB2228 and we respectfully ask that the committee move to give this legislation a “Do Not Pass” recommendation.

Thank you for your consideration,

Jason Bohrer  
President and CEO

Dear Chairman and Committee members,

We are opposed to the proposed bills.

We are 4<sup>th</sup> generation ranchers and landowners in Mercer and Oliver Counties in North Dakota and Jason has been long time employed as a Civil Engineer in the Oil and Gas Industry of North Dakota.

We were always taught in school and in life that the majority vote rules in a democracy. Not everyone is always going to get things to go their way.

It is very apparent when 90% of landowners in this particular sequestration area have signed lease agreements, they are in support of this project and the moving forward of the innovation of energy in our community and see the benefits for the energy and agriculture advancement for future generations.

The opposed have been extremely vocal about getting people to join their cause and have been spreading untruths as to the reality of Summit Carbon Solutions Project. An opposition felt to be primarily fueled by not getting enough money for the leasing of their particular pore space.

The state of North Dakota has rules and regulations in place in which Summit Carbon Solutions has taken every step to go above and beyond in safety, regulatory and landowner relations to meet these requirements. The opposed have taken every opportunity to slander Summit Carbon Solutions and the regulatory entities and tell landowners outright lies to sway the signing of lease agreements.

The opposed tell people that Summit Carbon Solutions is taking their land via the signing of a lease agreement. As rational voting adults in North Dakota, we all know this is not the case, lease agreements do not take away the landowner's rights or do many of the other things the opposed are saying will happen if the agreement is signed.

In the submitted testimonials of those who are in favor of this vote, many are not even active in maintaining a working ranch or farming the land, they rent it out for the income only. We are active ranchers and stewards of our lands, we ensure rotational grazing, adequate grass, and healthy water. We firmly believe this project will in no way jeopardize our way of life. One person in particular states her father always said "work hard because this is all going to be yours someday". This same man is my grandfather, he was a very forward thinker and believed in progress. We also lease many acres of land that was my grandfather's passed down to my uncle that is also leased by Summit Carbon Solutions for carbon storage.

Again, most landowners are in favor of this project, and 10% of the opposed should not be making decisions for the other 90%.

Thank you,

Jason and Angie Erickson



# WESTERN DAKOTA ENERGY ASSOCIATION

January 27, 2023

**EXECUTIVE COMMITTEE**

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Williams County

Craig Pelton  
Dunn County

John Phillips  
Coal Conversion  
Counties

Testimony of:  
Geoff Simon, Lobbyist #144  
in opposition to SB 2228 – Amalgamation Consent of All Landowners  
Senate Energy and Natural Resources Committee

Chairman Patten and Committee members:

On behalf of the city, county and school district members of the Western Dakota Energy Association (WDEA), we wish to express our strong opposition to SB 2228, which would require the consent of all surface owners affected by a project to permanently sequester carbon dioxide in underground formations.

Imposing a requirement that all landowners agree to a project that would store carbon dioxide flies in the face of long-standing policies regulating the exploitation of minerals and other opportunities to extract value from underground formations. A unanimous consent requirement would enable a single property owner who may own just a few surface acres in a development area to block a promising project that would generate great wealth for its developers and enormous tax benefits for North Dakota citizens.

It's important to emphasize that even if an individual who owns the surface and the underground pore space disagrees with a project and/or the amount of compensation that is offered, that property owner will continue to enjoy the benefits derived from use of the surface, and will receive the same compensation as other landowners who support the project's development.

North Dakota has been blessed with an abundance of mineral resources which have been developed for the benefit of investors who took the risk to produce them, generating billions in tax revenue for citizens through severance, extraction and production taxes. Our state is also blessed with geologic formations with the potential to store billions of tons of carbon dioxide and other substances in the pore space of underground sandstone formations. SB 2228, by requiring unanimous consent of surface owners, would deprive our citizens of the economic opportunities that these valuable underground formations offer.

WDEA urges the Senate Energy and Natural Resources Committee to give SB 2228 a strong Do NOT Pass recommendation to preserve this economic opportunity.

Thank you for the opportunity to testify on this important issue.

WDEA Executive Director



## SB2228 Testimony (In Favor Of)

Good morning, Mr. Chairman and Committee Members.

My name is Craig Ballensky, I live in Princeton MN with my wife Amanda and our two son's Camden and Mack. I was born in Dickinson North Dakota, was raised much of my childhood in Oliver County and moved to Minnesota as a youth. We have the good fortune of returning to North Dakota for years to enjoy the land that we own in Oliver County. Land that has been passed down from generation to generation and something my wife and I look forward to with our sons. The land that we enjoy has been in our family for over a century. During our time with the land, we have continued to improve the land by planting hundreds of trees to restore the homestead wind break, made fencing improvements, and have future water improvements and habitat planting projects for livestock and wildlife on the books. All of this is threatened with the legislation as written today.

SB2228 as proposed today will help in allowing us to continue to exercise our constitutional rights as private landowners as well as help in protecting the land for future generations, including our sons.

We are writing to you today to share our thoughts regarding carbon disposal and the processes involved. We are not against the idea of the carbon disposal in anyway, albeit, we are greatly offended by the process being used by a developer to procure land needed for this project. Our dealings with the developer up to this point have been disappointing at best. The lease that was presented at the beginning of this journey to us was extremely one sided with the bare minimum required of the developer. The current lease offered seems to be lacking in insurance coverages, offers below market compensation, onerous warranty and representation clauses, and allows the developer to install any equipment they deem necessary, anyplace on our property regardless of our wishes and they can pay us whatever they want for that surface use – with our only recourse to be to sue them at our cost if we don't agree.

In our best efforts to negotiate, we presented the developer with a lease we would sign in January of last year. We received no formal written offers to modify their lease to address our concerns until the SB2228 was circulated. It feels as if the developer was, or is, relying on assistance from the Government to "TAKE" our land without our consent. With their developer favored state statute NDCC 38-22-10 threatened, the developer was willing to talk with us about one of the many issues that pertain to the lease offered.

It is offensive that the government would allow the developer to **physically invade** our private property without our consent and unconstitutional that the government would help the developer with their statutory language to force non-consenting landowners to give up their private property without **due process**. It is far too common in this day and time for the government to take the side of big business, leaning on the private landowner and taking whatever is needed to achieve the government's goal through their alliance with big business. Today's unconstitutional process of the Industrial Commission stealing our property will result in benefits given to its' allies of big business at the sole expense of landowners.

Today you can balance the playing field for landowners and stop allowing the government / big business alliance to act and do whatever they feel necessary and in the words of Summit Carbon Solutions testimony on SB2313 on January 26<sup>th</sup> of accomplishing an **"unlawful taking"** from landowners in this case, by **"picking winners and losers"** with the losers being landowners in this case, by the **"state**

SB2228 Testimony (In Favor Of)

**legislature fingers on the scale of justice**” in in favor of big business in this case. Decisions made today will allow for future generations to enjoy all the great things North Dakota lands have to offer. Thank you for taking the time to read this testimony, we encourage a “Do-Pass” on SB2228.

Sincerely,

Craig and Amanda Ballensky, Oliver County North Dakota landowners.

1.26.2023

To the North Dakota legislators

I am writing this message to speak out in support of the proposed Senate bill 2228. What is happening now is just plain old trespassing. My Grandfather, Mr. John Oliver Smith and Grandmother, Matilda Smith homesteaded our farm over 100 years ago. He came from Sweden via New York and Minnesota to make a better life for him and his family They brought with them three children. We cannot imagine what courage it took to do this and even begin to understand the suffering they went through. Imagine leaving your family, country and the entire life that you've ever known to start completely over in a different world where you do not even speak the same language. Thinking of this now it is truly all remarkable. They had to break up the sod on the prairie to try and grow crops to survive. My Grandparents endured hardships that we will never completely understand, just to have something for their children to hold on too for as long as they wanted it.

Why should ANYONE be able to trespass or take another man's property just because they want to make a profit. As we should all be stewards of this earth – please do what is right and keep the farmers and landowners safe from something you can control. This is their land top to bottom, do not make the past sacrifices meaningless.

Respectfully,

Tammie Smith Somers – granddaughter of an original homesteader

**David & Vicki Degenstein  
Written Testimony  
Senate Energy and Natural Resources Public Hearing**

**January 26, 2023**

**Dear esteemed members of the Senate Energy & Natural Resources Committee:**

**As longtime residents of Mercer County and landowners in Oliver County, we write to you today to share our enthusiastic support of carbon capture and utilization, as it is vitally important to two of North Dakota's most important industries--agriculture and energy. This legislative session is of critical importance to our ability as a state to be responsive to innovations that help our industries and in turn, help our people.**

**You will be reviewing proposed legislation that seeks to impede, damage and even cripple our ability as a state to be nimble and innovative and support trailblazing efforts that are at the very fiber of the roughrider spirit we as North Dakotans possess. As you consider Senate Bills 2209, 2313, 2212, 2228, 2317 and 2314, and House Bills 1384 and 1466, please know of our staunch opposition to each bill and our encouragement for you to stand in opposition. Your NO vote will demonstrate your commitment to a vibrant North Dakota that is committed to solutions that benefit our state and our people; and not to poor policy that is clearly motivated by greed and self-interest or worse, by ignorance.**

**Thank you for voting NO and representing your constituency well.**

**Best wishes for a productive session,**

**David & Vicki Degenstein  
Hazen, ND**

Mark Draeb Testimony on Senate Bill 2228  
Energy and Natural Resources Committee Testimony

In Favor of SB 2228

Chairman and Committee members, my name is Mark Draeb, I live in Morton County with my wife Laurie. We own land in Mercer, Morton, and Stark Counties, some of which was homesteaded by my ancestors.

The current law which SB 2228 is trying to correct, allows for a company to secure a lease of 60% of the land near or around your property, and impose through eminent domain the terms of that lease on your property. The current law does not state what the terms of the lease need to be or protect the landowner in any way. For example, if the lease gives the company permission to drill, build, dig, or drive on your property, you are stuck with it whether you want it or not. Additionally, you are stuck with the economic terms of the lease which could be substantially less than what the 60% got for signing early, such as a bonus.

I have to assume this was not the intent of the original bill when it was passed. We all know laws can have unintended consequences and many times things like this get slipped in since the contributors of the bill language have their own vested interest in mind. SB 2228 simply corrects oversights in the original language and gives back ownership and control to the landowner.

Please note the following points:

1. The trouble with the opposition testimony is that it is primarily focused on economics and not landowner's rights. This is a landowner rights issue and not a state or private company economic issue. Any opposition touting state economics or private company interests should be scrutinized. A landowner should have the right to sell their property unencumbered. Currently, if Summit Carbon Solutions uses eminent domain to acquire a lease on my property, not only will the pore space be encumbered, but so will the surface area. Forcing a lease like this must be unconstitutional. For a real example, it would prevent me from leasing out our pore space to a salt water disposal lease which pays significantly more than what Summit is paying. Additionally, it encumbers the surface area reducing the economic value.
2. Water Injection Lifts Earth's Surface: While of significant value, the drawback with university research is that it is generally paid for and directed by "for profit" companies. Opposition touts the many years of research, but it might be worthwhile asking if any consideration was given to the actual and planned water injection projects in California and Italy where they have lifted the earth's surface by injecting water into the pore space with high pressure. Sound familiar? Does anybody actually believe that injecting a hazardous material like liquefied CO2 with extremely high-pressure underground will

not affect underground aquifers and other geological structures when similar strategies have been documented to do so in other parts of the country? See Exhibit A attached article "Injections Could Lift Venice 12 Inches" reference to California.

3. Land Owner Rights: Why should a land owner be subject to what 60% of the property owners near (not even next) to their property want to do? Disposing of CO<sub>2</sub> is not the same as utilities where we have standard language and processes for eminent domain and it generally only affects the sections lines or along roads. At the very minimum, Carbon Sequestration should follow that process.
4. 60% is a supermajority: Minnkota's testimony states the 60% is a supermajority of landowners. This is incorrect. The 60% required for eminent domain is a supermajority of land acreage. Actually, current law allows for a small minority of landowners that may have 60% of the acreage to hold the property rights of the majority of landowners hostage. The facts are actually opposite of Minnkota's testimony. Minnkota's testimony also states that requiring 100% of landowners ensures no CCS storage projects will move forward. I beg to differ. It would just cost Minnkota more resulting in the landowners getting more of the profits for use of their property. The burden should be on Minnkota, not the land owner.
5. Regulation and Principals: This section is to clear up Mr. Tiegen's of the ND Department of Commerce testimony. First, Mr Teigen states that "Commerce exists to increase the overall wealth of the state and we do this primarily through the attraction of both capital and talent". I agree, but it is not relevant to this bill unless he is suggesting a reallocation of wealth from landowners? Second: Mr. Teigen states that ND is "A state with a favorable regulatory environment, low taxes, and an approach that innovation trumps regulation. This bill directly flies in the face of the principles that we have used to build our state as a great place to invest and do business." This is just confusing. I agree with the low regulation and taxes, however this bill has nothing to do with either. In fact, it removes regulation from the Landowner's perspective by preventing the state offices from taking their land rights away without due process. Besides, for decades I have promoted ND principles as those of good character and work ethic derived from our rural farming and ranching industries. Third: Mr. Teigen states this bill will "signal to the world that ND is changing course and taking a stance of regulation over innovation." How is giving the landowner rights back to them regulation over innovation. It makes no sense at all. From what I can tell, Mr. Teigen's definition of increase overall wealth is taking from landowners and giving to corporations.
6. Bad Leasing Practices without SB 2228: Without SB 2228 companies get away with terrible leasing practices. They threaten landowners by indicating their neighbors have signed and if the landowner does not sign, they will lose the bonus once their property is acquired by eminent domain. Additionally, they include a favored nations clause that protects the lessee in case other lessees get better terms. So, landowners that try to get better terms are hung out to dry. SB 2228 puts the landowner in a better position to negotiate.

7. Summit Carbon Solutions project carbon footprint: I have not yet read where any of the testimony opposing this bill talks about how carbon sequestration is better for the earth. Maybe I missed it, maybe it is assumed, or maybe those that oppose the bill are doing so for economics. I suspect the latter. However, I asked Summit Carbon Solutions what is the carbon footprint for them to create their project as well as maintain it. I assumed considering it is such a large project that creating of the pipes, the shipping of the pipes, installation of the pipes, air and car travel to get leases, all the state politics, etc.; the carbon footprint would not be insignificant. I would also assume Summit would have a graph that would show how many years down the road where the amount of carbon put into the air from the installation and maintenance of the project would be less than that pumped underground. With all the supposed research, all they would provide is a comparison of proposed carbon sequestration to number of automobiles. Is it possible they did not even consider the carbon footprint to create this huge project or possibly they want to keep that data confidential for some reason? Below as exhibit B is a correspondence from Summit confirming this.

Thank you for your consideration

Mark Draeb

## Exhibit A

When seas rise, water flows up into Venice's Piazza San Marco via drains meant to carry rains away.  
PHOTOGRAPH BY ALVARO LEIVA, AGE FOTOSTOCK/GETTY IMAGES

# Injections Could Lift Venice 12 Inches, Study Suggests

Twelve wells to "inflate" city's foundations 12 inches over ten years?

BY BRIAN HANDWERK, FOR NATIONAL GEOGRAPHIC NEWS   

PUBLISHED JANUARY 21, 2012 • 8 MIN READ

Want to save sinking [Venice](#) from rising seas? Fight water with water, a new plan suggests.

Injecting billions of gallons of seawater could "inflate" porous sediments under the canal-crossed city, causing the Italian city to rise by as much as a foot (about 30 centimeters), scientists say.

(Read "[Charlie Chaplin's Venice](#)" from the new issue of National Geographic Traveler.)

Known to Venetians as the acqua alta, or "high water," flooding driven by high tides submerges the lowest 14 percent of the Italian destination four times a year, on average ([interactive map of Venice's flood zones](#)).

And it's only getting worse.

Venice dropped about 5 inches (12 centimeters) between 1950 and 1970, when groundwater was pumped out for industrial uses, according to city data. Currently, though, the city is sinking at a rate of less than two inches (five centimeters) a century, according to [a 2002 study in the journal Geophysical Research Letters](#).

But even as Venice's descent slows, the surrounding Adriatic Sea is swelling—with the average local sea level predicted to rise by perhaps a foot by the end of this century, said hydrologist [Giuseppe Gambolati](#), a proponent of the seawater-injection method.

(See National Geographic magazine's "[Vanishing Venice](#).")

Under the plan, a dozen wells surrounding Venice in a six-mile (ten-kilometer) circle would pump water into the ground over a ten-year period—nearly 40 billion gallons in all (150 billion liters).

"When you inject water, you cause an expansion of the injected formations," said Gambolati, a hydrologist at the University of Padua in [Italy](#).

"If land is settling, then you offset the settlement and sinking stops. [Once] land is stable, you induce an uplift."

[Enlarge Venice canal picture >>](#)





### Parting of the Waters

The modest rise could reduce the need for the still-under-construction [MOSE](#) floodgate system, aka Project Moses. Segments of the electromechanical system sit on the seabed at each of the Venetian Lagoon's three inlets. MOSE's giant panels are to be inflated to seal off the marshy lagoon when severe floods threaten.

By 2100 MOSE might be needed about 35 times a year if the average local sea level has risen by about 10 or 11 inches (roughly 28 centimeters), according to [a 2010 study in the journal Climate Dynamics](#).

The injection project could reduce that number to 4 times a year, according to a new study co-authored by Gambolati and published in the December 7 edition of the journal [Water Resources Research](#).

For the study, the researchers combined raw seismic data from the 1980s—when oil and gas companies were still allowed to use explosives to delve under the lagoon for geological observation—with more recent data. The result is a 3-D map that depicts the impermeable layer of clay under Venice in unprecedented detail.

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That clay, Gambolati said, is key.

"The seawater would be pumped into a number of sandy layers ... between 650 and 1,000 meters' depth [2,133 and 3,280 feet]," he said. "The presence of a clay cover above ensures that the injected seawater will not flow upward. Water will diffuse laterally within the layers it is pumped into."

(Related: [Venice "Ancestor" City Mapped for First Time](#))

### It's Been Done Before

Used by oil companies, this kind of subsurface fluid injection has previously caused land to rise in [California](#), [Canada](#), and elsewhere, [according to a 2010 study](#).

Civil engineer [Ron Wong](#), an expert in the underground injection of fluids for enhanced petroleum recovery, said the concept of "raising" Venice is definitely feasible if the geology below the city is right.

"We have more than 20 years of experience in Alberta injecting steam or water into the ground, and we have observed a very similar kind of heave, around 30 centimeters [1 foot] of permanent deformation," said Wong, who said heads the University of Calgary's department of civil engineering.

"But it has only worked here in dense sand." Wong said the study appears

In Alberta, Wong added, high-tech monitoring tools precisely track land as it slowly rises, to make sure the uplift is uniform. "If the heave is not uniform, you can cause a lot of damage on the ground," he said.

The University of Padua's Gambolati said his team's modeling study suggests that the entire city of Venice can be raised in unison to avoid any structural damage that might be caused if some sections rise higher than others.

Not Far-Fetched?

If the injection project is greenlighted, it would take only a year or two to get the decade-long pumping process underway, Gambolati estimates.

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The plan is also economical, he stressed, certainly in comparison with the MOSE system.

"We did not make a detailed breakdown of the cost," Gambolati said.

"However, offhand, the overall cost could be expected over the range of 200 to 300 million Euros [about U.S. \$255 to \$383 million].

"Consider that the planned cost of MOSE, as of today, is five billion euros [six billion dollars]," and that's before you factor in maintenance costs, he said.

Let It Flood?

So far, Venice's sometimes submerged streets and squares aren't dimming tourist enthusiasm. In 2011, for example, more than 20 million tourists visited the city, generating some two billion dollars in declared revenue.

The novelty of the acqua alta, in fact, might be one of the city's draws, said journalist [Erla Zwingle](#), an American who's called Venice home for 17 years.

"My husband, who is a native Venetian, said that if the MOSE system were operating, they'd have to open it periodically to let the flood waters flow, because the tourists love it so much," said Zwingle, who writes [a blog about everyday life in Venice](#).

"They take off their shoes and wade into the [Piazza San Marco \(picture\)](#) and take pictures of one another. To them, it's kind of fun."

Even when waters are high, many parts of the city don't flood. Those that do can often be traversed via several miles of passerelle, raised boards laid down by the city. Many hotels keep stores of galoshes or boots on hand.

For Venetians, Floods Are "a Small Nuisance"

The floods, added Zwingle, are relatively short—usually lasting a few hours till the tide recedes—and predictable. "It doesn't happen all the time or even most of the time."

The acqua alta season generally runs from September to April, and if a flood is going to happen, "it's most likely to happen when the moon is full or new, when there's a southeast wind, and/or when there's low atmospheric pressure. It doesn't strike out of the blue," Zwingle said.

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"People know in advance, so it's easy to deal with and low impact. It comes up and it goes back down."

(See [pictures: "Venice Floods Reach Five Feet, But Life Goes On."](#))

To residents, Zwingle adds, flooding is neither fun nor a catastrophe—just a part of life in Venice.

"Venetians are the only people who are not excited by the high water. A resident will just pull on his or her boots and pursue a normal schedule," she said.

In fact, Zwingle said, Venetians are more likely to get worked up over more familiar civic concerns, like lack of municipal funding and medical care or failing schools.

"Venice has been here for 1,500 years, and they've had high water for centuries," she said. "If it were such a problem for daily life that it couldn't be faced anymore, people would have moved away long before now."

[Quiz: How well do you know Venice? Test yourself >>](#)

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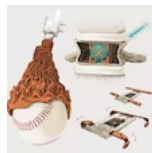
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## Exhibit B

### FW: CO2 Emissions and the SCS Project

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**Jeffrey Skaare** <[jskaare@summitcarbon.com](mailto:jskaare@summitcarbon.com)>  
To: Mark Draeb <[markdraeb@gmail.com](mailto:markdraeb@gmail.com)>  
Cc: "pj.scott22@gmail.com" <[pj.scott22@gmail.com](mailto:pj.scott22@gmail.com)>

Wed, Aug 31, 2022 at 10:54 AM

Greetings Mark:

I am following up on your additional question. Please see the response below. Again, we would like to have a meeting with you directly. We have some available times next week. We would be willing to come to your place or we would gladly host this at our office. Please let me know what day works best for you and we will work on scheduling.

Sincerely,

Jeff Skaare  
Summit Carbon Solutions, LLC  
P.O. Box 2655  
Bismarck, ND 58502  
701.590.3995  
[jskaare@summitcarbon.com](mailto:jskaare@summitcarbon.com)

**From:** John Satterfield <[jsatterfield@summitcarbon.com](mailto:jsatterfield@summitcarbon.com)>  
**Sent:** Wednesday, August 31, 2022 10:44 AM  
**To:** Jeffrey Skaare <[jskaare@summitcarbon.com](mailto:jskaare@summitcarbon.com)>  
**Subject:** CO2 Emissions and the SCS Project

Hi Jeff:

In response to your questions....

We will be calculating our Scope 1 GHG emissions related to construction of the asset. At this point, we've not approved construction bids. As we move closer/into construction (anticipated fall 2023), we'll be able to place a finer point on emissions because they will be based on actual activities rather than conjecture.

Once we move to operations, we will be measuring and reporting the carbon molecules captured at each partner plant and injected into the sequestration formations in ND. This measurement and reporting will comply with multiple regulatory schema including EPA, California Air Resources Board (CARB), and the ND Industrial Commission. Similarly, there may be reporting to international registries of the amount of GHGs captured and permanently sequestered.

From a gross emissions perspective, we have a capacity of 12 million metric tonnes per year (MMTA) we can capture, transport, and permanently sequester at our site in ND. This value equates to the emissions of approximately the 2.6 million automobiles. For comparison purposes, there are roughly 215,000 automobiles registered in the state of ND per the Federal Highway Administration <https://www.fhwa.dot.gov/policyinformation/statistics/2020/mv1.cfm>. The CO2 emissions from construction will quickly be dwarfed by the volume of CO2 we will be capturing and preventing from being released to the atmosphere.

A carbon intensity (CI) score is related to the supply/value chain of fuels. The efficacy of the capture and sequestration of CO2 by the SCS project will be reflected in the CI score of the ethanol fuels produced by our partner plants. There will not be a CI score attributed to the SCS project itself.

The move towards “net zero” for the ethanol plants can only be partially attributed to the SCS project. There are other opportunities related to renewable energy sources providing energy to the ethanol plants and corn farming practices that can be implemented that will further reduce the CI score of the partner plants to near zero by the end of the decade.

Let me know if you have any additional questions on this subject.

Thanks!

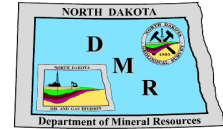
John

**JOHN SATTERFIELD | DIRECTOR, REGULATORY AFFAIRS & ESG**

O: (515) 620-2146 | [JSATTERFIELD@SUMMITCARBON.COM](mailto:JSATTERFIELD@SUMMITCARBON.COM)

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**Testimony of Lynn D. Helms  
Director, North Dakota Industrial Commission Department of Mineral Resources  
January 18, 2023  
Senate Energy and Natural Resources Committee  
SB 2228**

**The North Dakota Industrial Commission (NDIC) Department of Mineral Resources (DMR) strongly urges a Do Not Pass on SB2228.**

**This bill represents a huge step backwards for North Dakota's Carbon Capture Utilization and Storage (CCUS) policy.**

**The authority of the North Dakota Industrial Commission to ensure the protection of the correlative rights of property owners while preventing waste of our natural resources is almost 6 decades old. Initial attempts to follow the state of Texas model using only voluntary pooling and unitization resulted in very few units, half of which failed to increase recovery and all of which failed to achieve 100% ratification.**

**The NDIC and courts allowed voluntary units to proceed and include unsigned tracts, like a slice of Swiss cheese. Those unsigned tracts could not be used for fluid injection, so the Enhanced Oil Recovery process was disrupted, and production from the unsigned tracts had to be measured and marketed separately from unit production. As a result, the unsigned tracts pretty quickly reached economic limit and were shut in. The unsigned owners sued to get their leases back due to cessation of production and then leased their minerals to a small independent operator who could not maintain economic production and abandoned the wells. The NDIC ended up confiscating, plugging, and reclaiming the orphaned wells and sites.**

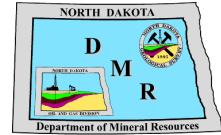
**In 1953 the 33<sup>rd</sup> Legislative Assembly passed North Dakota's first compulsory pooling statute and in 1965 the 39<sup>th</sup> Legislative Assembly passed North Dakota's compulsory unitization statute with an 85% ratification requirement. Repeated failures to unitize new discoveries and the resulting waste of hundreds of millions of barrels of oil resulted in ratification requirement changes to 80% in 1983, 70% in 1991, 60% in 2001, and 55% in 2017. These statutes have been challenged in court and in several Legislative Assemblies but were found to not be a taking as long as all owners are equitably or justly compensated.**

**Northwest Landowners Association v. State, et al. 2022  
Langved v. Continental Resources, Inc., et al 2017  
Hanson v. Indus. Comm'n, 466 N.W.2d 587, 594 (N.D. 1991)  
Texaco Inc. v. Indus. Comm'n, 448 N.W.2d 621, 623 (N.D. 1989)  
Hystad v. Indus. Comm'n, 389 N.W.2d 590, 595-96 (N.D. 1986)**

Bruce E. Hicks  
ASSISTANT DIRECTOR  
OIL AND GAS DIVISION

Lynn D. Helms  
DIRECTOR  
DEPT. OF MINERAL RESOURCES

Edward C. Murphy  
STATE GEOLOGIST  
GEOLOGICAL SURVEY



**In the absence of pore space amalgamation North Dakota CCUS operators, coal fired electric generation and ethanol facilities, will be forced to utilize the Environmental Protection Agency model of waste disposal. The NDIC would still have primacy, but the well(s) would be sited the same way saltwater disposal wells or non-hazardous waste disposal wells are sited with regulatory agency concerns limited to well and formation integrity within an Area of Review (AOR). Pore space owners would be left to seek compensation through the courts under common law derived from NDCC 38-11.1 OIL AND GAS PRODUCTION DAMAGE COMPENSATION or NDCC 32-15 EMINENT DOMAIN if the facility manages to qualify as a common carrier or public utility. The most recent CCUS projects approved by the NDIC include 250 – 1,450 pore space owners within the AOR. How many CCUS projects will go forward in the face of hundreds of jury trials to determine pore space owner compensation?**

**To the best of my knowledge there is only one completed case in which the courts have determined just compensation for a saltwater disposal well. After 4 years of litigation the surface / pore space owner of the land upon which the well is located was awarded approximately \$20,000 in a jury trial for past, present, and future damages while in a separate action the judge awarded their legal counsel approximately \$340,000 attorney's fees. The neighboring owners have not yet received anything and will have to litigate their cases. Of course, attorneys are urging them to do so. Since this is now the common law definition of just pore space owner compensation, the NDIC urges you to give SB2228 a Do Not Pass and retain equitable compensation under NDCC 38-22 CARBON DIOXIDE UNDERGROUND STORAGE.**

**Thank you for your time and consideration,**

Lynn D. Helms, PhD  
*Director*

701.328.8020 • [lhelms@nd.gov](mailto:lhelms@nd.gov) • [www.dmr.nd.gov](http://www.dmr.nd.gov)

**Do Pass Testimony  
of Doug Sharbono, citizen of North Dakota  
on SB2212  
in the Sixty-seventh Legislative Assembly of North Dakota**

Dear Chairman Patten and members of the Senate Energy and Natural Resources Committee,

I am writing as a citizen and believe SB2212 and its companion bill SB2209 are much needed legislation.

I believe in the process of eminent domain benefitting society with needed products and services. Gas, oil, electricity, and transportation require eminent domain to make society function. Carbon dioxide sequestration is not required to make society function.

There is no environmental benefit to carbon dioxide sequestration. Scientifically, if historically trapped carbon dioxide is analyzed from other periods of time, we find there were periods of time when the earth was detrimentally much cooler and more unlivable when the concentration of carbon dioxide in the air was less. We are currently within the margins of measurement error if the earth has warmed since the 1970s. We can thus conclude our anthropogenic contribution to carbon dioxide in the atmosphere has had little affect except perhaps making our crops grow better with the photosynthesis process having more available carbon dioxide to grow the plant material.

The carbon dioxide pipeline and the carbon dioxide sequestration fields DO NOT qualify for eminent domain due to lack of public benefit. If willing sellers of these properties can be found, they can continue with their efforts. Otherwise, it is not the public's interest to intervene with eminent domain.

Thank you,

Doug Sharbono  
1708 9<sup>th</sup> St S  
Fargo, ND 58103





**Senate Bill 2228**  
**Testimony of Ron Ness**  
**Senate Energy and Natural Resources Committee**  
**January 27, 2023**

Chairman Patten and members of the Committee, my name is Ron Ness, President of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 600 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition of Senate Bill 2228.

In 2009, the North Dakota Legislature enacted Chapter 38-22 of the North Dakota Century Code. That enactment granted authority to the North Dakota Industrial Commission (“Commission”) to regulate carbon dioxide sequestration in the State. As originally enacted, the Commission could not create and establish a carbon dioxide storage facility unless 60 percent of the surface owners within the proposed storage facility area voluntarily leased their pore space to the storage facility operator. Pursuant to North Dakota law, title to pore space is vested in the owner of the overlying surface estate. Under NDCC Chapter 38-22, as currently in effect, the Commission has created and established three carbon dioxide sequestration storage facilities – the Red Trail Ethanol Plant Storage Facility, the Minnkota Milton R. Young Storage Facility, and the Dakota Gasification Company Storage Facility.

Senate Bill 2228, if adopted, would change the percentage of approval needed for the Commission to establish a carbon dioxide storage facility from 60 percent to 100 percent. In other words, without approval of all surface owners within the proposed storage facility area, the

Commission could not create and establish the storage facility. If the provision of Senate Bill 2228 had been in effect prior to the Commission's approval of the Red Trail Storage Facility, the Minnkota Milton R. Young Storage Facility, and the Dakota Gasification Company Storage Facility, it is certain that none of these storage facilities would have been established. If the provisions of Senate Bill 2228 are enacted by the Legislative Assembly, it is certain no additional storage facilities will be created and established by the Commission. For example, in any application to the Commission for the creation and establishment of a carbon dioxide storage facility, those who might oppose the project need do nothing more than purchase one acre or less of land within the proposed storage facility area and refuse to sign a pore space lease. By doing so, that single owner can prevent the hundreds of other owners who might own thousands of acres from receiving the monetary benefits of carbon dioxide sequestration on their lands.

Some might argue that Senate Bill 2228 is good policy because it prevents the unauthorized taking of private property rights from those who may choose not to lease their pore space for carbon dioxide sequestration. As you are likely aware, both the United States Constitution and the North Dakota Constitution prohibit the taking of private property without compensation. Recognizing that pore space is a valuable property right, Chapter 38-22 specifically requires that all non-consenting pore space owners within a storage facility be compensated for the use and occupation of their pore space. Accordingly, the authority of the Commission to amalgamate or "unitize" the pore space of non-consenting pore space owners to allow for the injection and sequestration of carbon dioxide is an authorized taking under both the federal and state constitutions.

Similar arguments have been made with regard to oil and gas development in the United States. These arguments, however, have uniformly been rejected by the courts. Just as a number

of courts have held that a small number of mineral owners should not be granted the authority to prevent other mineral owners from developing their mineral interests, a single surface owner should not be granted the authority to prevent other surface owners from leasing and developing their pore space.

If Senate Bill 2228 is enacted, it is likely that carbon dioxide sequestration activities in the State of North Dakota will end. Farmers and ranchers who would otherwise have an opportunity to supplement their farming and ranching income would lose that opportunity because one person with a very small interest within a storage facility area could prevent the storage facility from being created by the Commission. Providing that sort of power and authority to one person, while denying an opportunity to the majority is not only unfair, it is bad policy.

The North Dakota legislature, in setting forth the policy of the State in Section 38-22-01 of the Century Code, recognized that “[o]btaining consent from all owners may not be feasible, requiring procedures that promote, in a manner fair to all interests, cooperative management, thereby ensuring the maximum use of natural resources.” Accordingly, the legislature chose a consent threshold of 60 percent for pore space amalgamation. This number recognizes that a majority of owners must decide, but also provides additional assurance of more widespread support amongst the owners for the project.

If you believe that energy development is important to North Dakota, defeat this bill. Senate Bill 2317 is a mirror image of Senate Bill 2228 except Senate Bill 2317 uses 85 percent as its consent threshold for pore space amalgamation. This is equally as bad as 100 percent. The North Dakota Petroleum Council strongly opposes Senate Bill 2228 and urges a **Do Not Pass Recommendation**.

Testimony of Senator Jeff Magrum  
in favor of  
SENATE BILL NO. 2228  
Senate Energy and Natural Resources Committee  
January 27, 2023

Chairman Patten and members of the committee,

I sponsored Senate Bill 2228 because I have received a very large number of calls and emails from landowners asking for my help. I am happy to speak up on behalf of the landowners and to bring this bill forward so that they can have their issues heard and discussed.

I have worked with the Northwest Landowners Association on an amendment to the original bill, which is based on feedback that I received and that they received. Our goal was to find a constitutional path forward that allows project development and also protects the landowners and their property rights. We feel we have come up with a reasonable solution for all of the stakeholders and I support the amendment that will be proposed by Troy Coons with Northwest Landowners Association, who will speak next and provide you with more detail.

Testimony of Troy Coons on behalf of  
Northwest Landowners Association  
in favor of  
SENATE BILL NO. 2228  
Senate Energy and Natural Resources Committee  
January 27, 2023

Chairman Patten and members of the committee, thank you for taking my testimony into consideration today.

My name is Troy Coons and I am the Chairman of the Northwest Landowners Association. Northwest Landowners Association represents over 525 farmers, ranchers, and property owners in North Dakota. Northwest Landowners Association is a nonprofit organization, and I am not a paid lobbyist.

We support SB 2228 because it is a constitutional path for these projects to occur. I have been asked by many people: “What is the right percentage?” When you amalgamate any amount of property owners, it is a taking, and for them, it is a 100% taking. So we cannot agree that there is a certain percentage that allows something that is unconstitutional.

But we were also asked how these projects could happen if that is true, and so we tried to find a way, and that is what our proposed amendment does, which I am offering along with this testimony and with the blessing and support of Senator Magrum. Amalgamation proceedings before the North Dakota Industrial Commission are actually permit proceedings before Lynn Helms and the Oil and Gas Division. Our concern with this is that Mr. Helms testified in 2019 in favor of SB 2344, and said it was necessary to remove the ability of landowners to receive compensation based on an example of the economics for gas storage. *See* Legislative History of SB 2344, p. 4, (2019) (<https://www.legis.nd.gov/files/resource/66-2019/library/sb2344.pdf>). He explained the point of his illustration, stating “I bring that up because you can see this project stores and reproduces the gas at \$2.96, which means it can’t endure any additional burden from having to compensate for pore space being temporarily used for the storage of natural gas.” *Id.*

This law as it stands requires landowners to go before this same regulator to determine the amount of “equitable” compensation they will receive. That is not fair. That is not “just” compensation. Article One, Section Sixteen of the North Dakota Constitution says that for a taking, the landowner “may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law.”

Many, many projects happen in this state every day through the use of eminent domain. We as landowners never like to see the use of eminent domain, but we understand that sometimes it is necessary. We do not believe the eminent domain process is one that is very favorable for landowners, either. But we are trying to find a compromise with the industries who want to operate in North Dakota, and we are also trying to find a path that is constitutional and allows development to occur. This amendment and the bill as amended would provide regulatory certainty and avoid the need for litigation over permitting and jurisdictional issues. If there are disputes about just compensation, they can be decided by juries the way our Constitution requires and by using a system that is tried and true. It is simply more reasonable to use the process of eminent domain rather than making up a new amalgamation process that is clearly unconstitutional and will only subject developers to litigation.

This is our opportunity to find a solution and resolve these issues. We have said from the beginning that we are here to work cooperatively, and our invitation stands to work with industry. Even without that cooperation, we are trying to meet in the middle and that is why we are offering this proposed amendment – to find a way forward and find some middle ground. We hope you will take us up on this offer, and please vote do pass on SB 2228.

Thank you,

Troy Coons  
*Northwest Landowners Association*



January 15, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2228

Page 1, line 15, remove the overstrike over "~~made a good faith effort to get~~"

Page 1, line 15, remove "obtained"

Page 1, line 17, remove the overstrike over "~~That the storage operator has obtained the consent of persons who own at least~~"

Page 1, line 17, after "~~sixty~~" insert "eighty-five"

Page 1, remove the overstrike over line 18 and insert immediately thereafter "If a county elects to require written consent from more than eighty-five percent of the persons that own the storage reservoir's pore space, the storage operator has received written consent from the specified percentage of the owners required by the county."

Page 1, line 19, remove the overstrike over "~~6.~~"

Page 2, line 1, remove the overstrike over "~~7.~~"

Page 2, line 1, remove "6."

Page 2, line 3, remove the overstrike over "~~8.~~"

Page 2, line 3, remove "7."

Page 2, line 4, remove the overstrike over "~~9.~~"

Page 2, line 4, remove "8."

Page 2, line 6, remove the overstrike over "~~10.~~"

Page 2, line 6, remove "9."

Page 2, line 8, remove the overstrike over "~~11.~~"

Page 2, line 8, remove "10."

Page 2, line 9, remove the overstrike over "~~12.~~"

Page 2, line 9, remove "11."

Page 2, line 12, remove the overstrike over "~~13.~~"

Page 2, line 12, remove "12."

Page 2, line 15, remove the overstrike over "~~14.~~"

Page 2, line 15, remove the overstrike over "~~That all nonconsenting pore space owners~~"

Page 2, line 15, after the overstruck period insert "have received just compensation under chapter 32-15 and section 16 of article I of the Constitution of North Dakota or the district court has authorized the plaintiff to take possession under section 32-15-29."

Renumber accordingly



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January 26, 2023

RE: SB 2228 – Energy and Natural Resources Committee Testimony (In Favor Of)

Chairman and Committee Members:

My name is Scott T. Solem. I am an attorney with offices in Beulah and Hebron. I have practiced law for the better part of 30 years in Beulah and 20 years in Hebron. During that time, I have reviewed and negotiated on behalf of clients numerous energy leases. I suspect that I have reviewed more coal leases than any other attorney in North Dakota, with the exception of the attorney's for the coal companies. I have reviewed and negotiated several hundred oil and gas leases, dozens of wind farm leases, and more recently solar energy leases. In the past year I have also had opportunities to review carbon sequestration leases being offered in Mercer and Oliver Counties. These leases are extremely one sided in favor of the developer, requiring full surface use and access without any pre-determined terms and conditions for easements such as location, restoration, reclamation, financial security, and compensation. Similar terms and conditions are found in virtually every other type of energy related leases currently offered in the other aforementioned energy sectors.

I and Bismarck attorney, Derrick Braaten, currently represent several private property owners who farm and ranch in Mercer, Oliver, and Morton County. The lease that they have been offered provides 1/5<sup>th</sup> of the liability and insurance coverage that the Project Tundra provides landowners in their lease and does not provide landowners any access to pollution insurance coverage. This lease further takes all of the private landowners pore space layers, whether required for their injection well permit or not. It does not provide for reimbursement of attorney's fees for landowners. It has overbearing indemnity, representation, and warranty clauses. And it fails to provide market compensation for landowners which we've estimated at 3 to 9 times less than other disposal facilities currently under development in several other states.

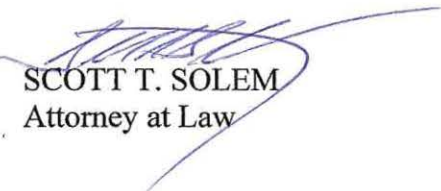
The low 60% threshold for amalgamation allows the developer to not have to negotiate in good faith with private landowners once the low threshold has been achieved. Attorney Braaten and I have endeavored to develop a fair and reasonable lease agreement which provides basic landowner rights protections that you would see in any other energy related lease of this nature. A redline copy of this proposed lease, which Kurt Swenson has already provided you a copy of, was provided to the developers on 1/25/2022. Despite repeated efforts to engage in good faith discussion over the requested amendments to their proposed



lease, it was not until this SB 2228 was circulated that the developer reached out to my landowners group and Mr. Braaten to start discussions on amended lease terms.

The current 60% minimum threshold for amalgamation does not encourage arm's length and good faith negotiations between carbon sequestration developers and private property owners. To the contrary, it does just the opposite. The proposed amendment as presented in SB 2228 if passed will have the effect of encouraging good faith negotiations with developers and private property owners which will in turn result in fair and reasonable lease terms similar to those that we see in coal leases, oil and gas leases, wind energy leases, and solar energy leases. I encourage a "Do-Pass" on Senate Bill 2228.

Respectfully submitted,



SCOTT T. SOLEM  
Attorney at Law

23.0391.02001

Sixty-eighth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2228**

Introduced by

Senator Magrum

1 A BILL for an Act to amend and reenact section 38-22-08 of the North Dakota Century Code,  
2 relating to permit requirements for pore space storage; to repeal section 38-22-10 of the North  
3 Dakota Century Code, relating to amalgamation property interests; and to declare an  
4 emergency.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 38-22-08 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **38-22-08. Permit requirements.**

9 Before issuing a permit, the commission shall find:

- 10 1. That the storage operator has complied with all requirements set by the commission.
- 11 2. That the storage facility is suitable and feasible for carbon dioxide injection and
- 12 storage.
- 13 3. That the carbon dioxide to be stored is of a quality that allows it to be safely and
- 14 efficiently stored in the storage reservoir.
- 15 4. That the storage operator has ~~made a good-faith effort to get~~obtained the consent of
- 16 all persons who own the storage reservoir's pore space.
- 17 5. That the storage operator has obtained the consent of persons who own at least
- 18 ~~sixty-eighty-five~~ sixty-eighty-five percent of the storage reservoir's pore space. If a county elects to
- 19 require written consent from more than eighty-five percent of the persons that own the
- 20 storage reservoir's pore space, the storage operator has received written consent from
- 21 the specified percentage of the owners required by the county.
- 22 6. Whether the storage facility contains commercially valuable minerals and, if it does, a
- 23 permit may be issued only if the commission is satisfied that the interests of the
- 24 mineral owners or mineral lessees will not be adversely affected or have been