

EASEMENT AGREEMENT

This Easement Agreement (“Agreement”) is made and entered into this _____ day of _____, 2023, by James B. Gansen and Mary L. Gansen, husband and wife (hereafter “Gansen” or “Parcel A Owner”), and Robert J. Flanagan and Tina M. Flanagan, husband and wife (hereafter “Flanagan” or “Parcel B Owner”).

RECITALS

- A. Gansen is the owner of the following-described real estate herein referred to as “Parcel A”:

Lot 2 of JQ Acres No. 3, in Dubuque County, Iowa, according to the Plat recorded as Instrument #2020-13861, records of Dubuque County, Iowa

- B. Flanagan is the owner of the following-described real estate herein referred to as Parcel “B”:

Lot 1 of JQ Acres No. 3, in Dubuque County, Iowa, according to the Plat recorded as Instrument #2020-13861, records of Dubuque County, Iowa.

- C. Parcel A and Parcel B both benefit from a sixty-six foot wide easement over and across the following-described real estate owned by the City of Dubuque and herein referred to as the “City Parcel”:

Lot 1 of JQ Acres in Section 1, Table Mound Township, Dubuque County, Iowa.

The easement over the City Parcel provides an access easement for ingress and egress from the public right of way (currently called Bellevue Heights Road), over the City Parcel to Parcel A (the “City Easement”).

- D. Parcel B benefits from an easement sixty-six feet in width from the north end of the City Easement, across Parcel A and to the west boundary of Parcel B, all as

shown on the Plat of JQ Acres No. 3, Dubuque County, Iowa, recorded September 14, 2020 as Instrument No. 2020-00013861 in the records of the Dubuque County Recorder (the “New Easement”).

- E. Flanagan has developed a gravel road over the City Easement and the New Easement from the public right of way to the west boundary line of Parcel B.
- F. The parties desire to set forth the respective rights and obligations of each party, and their successors in interest, with respect to use, maintenance, repair and replacement of the City Easement.
- G. The parties desire to reduce such agreements to writing.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree upon the following mutual terms and conditions:

1. Use of City Easement. Both Gansen and Flanagan, and their successors in interest in ownership of Parcels A and B, shall have the right to use the City Easement for ingress and egress from their respective Parcels to the public right of way.

2. Maintenance, Repair and Replacement. Any Parcel or portion thereof subject to this Agreement that is developed for residential use shall, after completion of such construction, share equally in the cost of all necessary and reasonable maintenance (including snow removal), repair or replacement of that portion of the City Easement used by each Parcel or portion thereof. Parcel B Owner shall not be responsible for improving the City Easement with any surface other than gravel. In the event a sufficient number of residences are constructed such that the City Easement is required to be developed to city or county standards, Parcel A Owner shall be solely responsible for the cost of constructing such road and related elements. Parcel A Owner and Parcel B Owner shall share in the cost of maintenance and repair of the City Easement in proportion to the number of lots utilizing the City Easement until such time, if ever, that it is accepted as a public street.

In the event the parties are unable to agree upon whether any maintenance or repair is necessary and reasonable, the parties shall within ten (10) days of request by either party, mutually agree upon a disinterested third party with knowledge of road maintenance, repair and replacement (the “Arbiter”). If a party fails to participate in the selection process such person shall forfeit their right to participate in the selection process. If the parties cannot agree upon an Arbiter, each party shall name its own preliminary Arbiter and the preliminary Arbiters so named shall, within ten (10) days of selection, jointly agree upon a single Arbiter, who shall not be any of the preliminary Arbiters. Each Parcel upon which a residence has been constructed shall then, within ten (10) days of the date of agreement on the Arbiter (the “Presentment Period”), present to the Arbiter the person's position and reasoning with respect to the proposed item of maintenance, repair or replacement. If a party fails to provide any input to the Arbiter, then that party shall be deemed to have forfeited the right to do so. The Arbiter shall then, within ten (10) days after the end of the Presentment Period issue a decision in writing as to the course of action to be pursued with respect to the item. The decision of the Arbiter shall be binding upon all

parties subject to this Agreement and shall be final. Each party shall pay their portion of the cost of the item within thirty (30) days after completion of the work performed.

This Agreement shall apply only if Parcel A is used for agricultural or residential purposes.

3. Miscellaneous. This Agreement shall be binding upon the parties hereto and their successors and assign and shall be deemed to run with Parcel A and Parcel B. This Agreement shall be governed by and construed under the laws of the state of Iowa. In the event of a breach of this Agreement, the non-breaching party shall be entitled to all rights and remedies available at law or equity, and to recovery of reasonable attorneys' fees and other costs incurred due to such breach.

IN WITNESS WHEREOF, this Easement Agreement was signed as of the date and year first above written.

James B. Gansen

Mary L. Gansen

STATE OF IOWA)
COUNTY OF DUBUQUE) ss:

This instrument was acknowledged before me on the _____ day of _____, 2023, by James B. Gansen and Mary L. Gansen.

NOTARY PUBLIC IN AND
FOR THE STATE OF IOWA

Robert J. Flanagan

Tina M. Flanagan

STATE OF IOWA)
COUNTY OF DUBUQUE) ss:

This instrument was acknowledged before me on the _____ day of _____,
2023, by Robert J. Flanagan and Tina M. Flanagan.

NOTARY PUBLIC IN AND
FOR THE STATE OF IOWA