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DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

ZW

Prepared by and return to:
Matthew J. Hektoen, Simmons Perrine Moyer Bergman PLC
115 Third Street SE, Suite 1200, Cedar Rapids, Iowa 52401, Telephone (319) 366-7641
Legal Description on Page 8 and 9

BOAT DOCK AND LIFT EASEMENT AND ACCESS EASEMENT AGREEMENT

This Boat Dock Easement and Access Easement Agreement ("*Agreement*") is made and entered into this 30th day of May, 2014 (the "*Effective Date*"), by and between **Lake Delhi Combined Recreational Facility and Water Quality District**, an entity formed under Iowa Code Chapter 357E ("*Grantor*"), and **Kristine Nation** ("*Grantee*"). Grantee and Grantor are collectively referred to as the "*Parties*".

RECITALS

A. Grantor is the titleholder of real estate legally described on **Exhibit "A"**, attached hereto and incorporated herein by reference (the "*Real Estate*").

B. Grantee is the owner of certain real estate locally known as 23091 264th Street, Delhi, Iowa and legally described on **Exhibit "B"**, attached hereto and incorporated herein by reference (the "*Benefitted Property*").

C. Grantor desires to grant to Grantee certain easements for boat dock and lift purposes and pedestrian ingress and egress purposes.

NOW THEREFORE, for the consideration of the mutual covenants made below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **Easements**. Grantee hereby grants, assigns and sets over to Grantor the following easements:

(i) A non-exclusive easement for the purpose of constructing, operating, maintaining, repairing, replacing and removing a boat dock (the "*Boat Dock*") and one (1) lift system (the "*Lift System*") (the Boat Dock and the Lift System are collectively referred to hereinafter as the "*Boat Dock and Lift System*") in, on and about a portion of the Real Estate to be determined by the Grantor in

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(ii) accordance with the terms of Section 2 of this Agreement, subject to the conditions set forth below (the "*Boat Dock and Lift Easement*"); and

(iii) An non-exclusive easement for pedestrian ingress and egress and right of way access across the Real Estate to transport boating and dock, lift system equipment from 230th Avenue to the Boat Dock and Lift Easement to be determined by the Grantor in accordance with the terms of Section 2 of this Agreement (the Boat Dock and Lift Easement and Access Easement are collectively referred to hereinafter as the "*Easements*").

2. **Siting of Easements.** If and when the "Lake Delhi Dam" is constructed by Grantor, Grantor will identify, with as much particularity as is reasonable under the circumstances, the location of the Easements on the Real Estate. Grantor reserves the right to site the Lift System on a docking system supporting a single lift system (the "*Single Lift System*") or a docking system that supports multiple lift systems (the "*Multiple Lift System*"). In the event that Grantor elects the Single Lift System, Grantee shall be solely responsible for the installation, maintenance, repair and replacement of the Boat Dock and Lift System. In the event Grantor elects the Multiple Lift System:

   (i) the Boat Dock and Lift System Easement shall automatically be modified to remove from the estate granted by said easement the right to construct, operate, maintain, repair, replace and remove a boat dock and Grantee agrees to execute an amendment to this Agreement in the event Grantor requests such an amendment for the purposes of clarifying the location and scope of the Easements;

   (ii) Grantee shall be responsible for a fraction of the cost of installation, maintenance, repair and replacement of the Boat Dock the numerator of which shall be one (1) and the denominator of which shall be the total number of lift systems or slips serviced by the Dock (the "*Pro-Rata Share*");

   (iii) Grantee shall pay the Pro-Rata Share of all fees required by the Iowa Department of Natural Resources for the installation and use of the Boat Dock;

   (iv) Grantee shall be solely responsible for the installation, maintenance, repair and replacement of the Lift System and solely responsible for the fees required by the Iowa Department of Natural Resources for the installation and use of the Lift System; and

   (v) Grantor shall install the Boat Dock at a time of its choosing following the completion of construction of the "Lake Delhi Dam" at minimum standards as set forth by the Iowa Department of Natural Resources.

   Grantor reserves the right to determine, in its sole and absolute discretion, if, when and the extent to which repair or replacement of the Boat Dock is necessary.

3. **Nature and Limitations on Use of Easements**. The Easements and Boat Dock and Lift System are for the exclusive use of the record titleholder of the Benefitted Property and may not be assigned, leased, licensed or otherwise conveyed without the prior express written consent of Grantor. Notwithstanding the foregoing, immediate family members of the recorder titleholder of the Benefitted Property may accompany said record

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titleholder across the Access Easement and Boat Dock and Lift Easement as part of said titleholder's use of the same. To the extent that the Grantor grants access and use rights across the Access Easement, Grantee agrees to share use of said easement. Grantor reserves the right to determine the level of improvements made to the Access Easement, if any. This Easements and the Boat Dock and Lift System is further subject to the any existing easements of record and a boat ramp with a minimum width of fifteen feet (15) to be installed by Grantor in a location determined by Grantor in its sole and absolute discretion. As and when the Iowa Department of Natural Resources or the Grantor delivers notifications that the watercraft and/or the docking and lift systems to be removed from Lake Delhi for the winter season, Grantee shall do so within two (2) weeks of delivery of said notification. Grantee shall not store said watercraft and docking and lift systems in the Easements or the Real Estate.

4. **Duration of Easements**. The duration of the easements set forth above shall be perpetual subject to limitations set forth herein.

5. **Indemnification**. The Grantee shall indemnify, defend and hold harmless the Grantor, its directors, officers, employees, attorneys and agent at all times after the date of this Agreement from and against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee and penalty or other charge, including "Litigation Expense" (as hereinafter defined), arising out of (1) damage to property or injury or loss of life caused by the Grantee in or about the Easements, (2) any breach of a representation, warranty, covenant made by Grantee or any obligation of Grantee set forth herein in or pursuant to this Agreement, and (3) any costs or expenses which are the obligation of the Grantee under this Agreement. As used herein "Litigation Expense" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim for indemnification under this Agreement, including, without limitation, in each case, attorneys' fees, other professionals' fees, and disbursements.

6. **Maintenance**. Grantee shall have an obligation to repair any damage that may be caused by its use or allowed use of the Easements, which damage exists in the opinion of Grantor as determined by its sole and absolute discretion.

7. **Insurance**.

   (i) The Grantee shall, at its sole cost and expense, obtain and maintain in effect, commencing with the Effective Date and continuing throughout the term of the Easements, insurance policies providing for the following coverage: special form (commonly called "all risk") property insurance against fire, theft, vandalism, malicious mischief, and such additional perils as now are or hereafter may be included in a standard extended coverage endorsement from time to time in general use in the State of Iowa, insuring the Boat Dock and Lift System and all other property of the Grantee located in any of the Easements and the amount of such insurance will be set forth in an "aggregate endorsement" to the policy of such insurance, not less than one hundred percent (100%) of the full replacement value without deduction for depreciation; and

   (ii) Each party shall, at its sole cost and expense, obtain and maintain in effect commencing with the Effective Date and continuing throughout the term of the Easements, insurance policies providing for the following coverage: a commercial

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general liability policy, naming the other party as an additional insured, protecting against any and all claims for injury to persons or property occurring on or about the Real Estate or Easements and protecting against assumed or contractual liability under this Agreement with respect to the Easements and the operations of Grantee of the Boat Dock and Lift System with such policy to be in the minimum amount of One Million Dollars ($1,000,000.00) per occurrence.

(iii) In the event that (a) the Lift System is integrated in to a dock system servicing multiple lift systems or slips, and (b) Grantor determines that the Boat Dock would be better insured by a single policy under Section 7(i), Grantor may, at its option, elect to assume the responsibilities of Grantee under Section 7(i). In such event, Grantee agrees to pay its Pro-Rata Share of said insurance premiums and deductibles.

8. **Subrogation**. Each party shall cause its insurance policies to contain either a waiver of any right of subrogation the insurer may acquire against the other party by virtue of payment of any loss under any such insurance.

9. **Department of Natural Resources Compliance**. Grantee represents, warrants and covenants that it shall construct, maintain, repair and operate the Boat Dock and Lift System in compliance with all relevant laws, codes, rules and regulations, including, but not limited to, those promulgated by the Iowa Department of Natural Resources. Grantor agrees to cooperate with Grantee for the purpose of applying with the Iowa Department of Natural Resources for a boat dock permit. Grantor makes no representation as to the size and scope of the Boat Dock and Lift System that is suitable for the Boat Dock and Lift Easement. Grantee acknowledges that the size and scope of the Boat Dock and Lift System is governed by applicable Iowa Department of Natural Resources rule and regulations.

10. **Application for Permit**. Grantee shall be responsible for compiling all materials (the "*Application Materials*") necessary to make a successful application with the Iowa Department of Natural Resources for the Boat Dock and Lift System or, in the case of a docking system that supports multiple lift systems and slips, Grantee's portion of materials necessary to make a successful application with the Iowa Deparment of Natural Resources, as the case may be. Upon receipt by Grantor of the Application Materials and all necessary application fees, Grantor shall submit the Application Materials to the Iowa Department of Natural Resources. Grantee shall bear the cost, or pro-rata cost, as the case may be, of all permits and any other fines, fees, penalties or other costs associated with the construction, maintenance, operation, repair or replacement of the Boat Dock and Lift System.

11. **No Construction**. Grantee shall not make any alterations, additions or improvements or install any fixtures in the Easements, except for the Boat Dock and Lift system to be constructed in the Boat Dock and Lift Easement, without Grantor's prior written consent. Grantee shall not allow a mechanic's lien or any other liens to attach to the Easements or any portion of the Real Estate.

12. **Dam Structure**. Grantee shall utilize the Easements so as not to adversely impact the integrity of the Delhi Dam, Spillway and appurtenant structures as determined in the sole and absolute discretion of the Grantor's engineer.

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13. **Termination**. This Agreement will terminate and the Easements shall be void and no further effect in the event any of the following occurs:

(i) Written mutual agreement between the parties expressing the mutual desire of the parties to terminate this Agreement, or

(ii) Commencement of proceedings by or against Grantee in any court under a bankruptcy act or for the appointment of a trustee or receiver of Grantee's property after the recordation of this Agreement with the Delaware County, Iowa Recorder, which proceedings are not dismissed within thirty (30) days of the filing date.

(iii) Grantee becoming insolvent, making a transfer in fraud of creditors or an assignment for the benefit of creditors and the assignment is not dismissed within thirty (30) days.

(iv) Grantee failing to discharge any lien placed on the Real Estate or any other improvements located thereon in violation of Section 11 within twenty (20) days after such lien or encumbrance is filed with the Iowa Secretary of State or other applicable public filing office.

(v) Failure by Grantee to comply with the terms of Section 9 of this Agreement and such failure continues and is not cured within thirty (30) days after delivery by Grantor of written notification of such failure.

(vi) Failure by Grantee to comply with any term, provision or covenant of this Agreement other than Section 9 or Section 11 and such failure continues and is not cured within thirty (30) days after delivery by Grantor of written notification of such failure.

(vii) Failure by Grantee to keep current all permits with the Iowa Department of Natural Resources necessary to maintain the Boat Dock and Lift System and such failure continues and is not cured within thirty (30) days after delivery by Grantor of written notification of such failure.

(viii)The Easements are used by Grantee, its successors or assigns for a commercial purpose.

14. **Authority/Complete Agreement**. The undersigned have procured all required approvals to bind the undersigned entity to this Agreement. This Agreement constitutes the complete agreement of the parties in connection with the subject matter hereof.

15. **Notices**. Any and all notices or demands required or permitted to be given hereunder shall be deemed to be properly served and delivered if sent by certified mail, postage prepaid, addressed to the parties as follows:

GRANTOR

Lake Delhi Combined Recreational
Facility and Water Quality District
Attn: Board President

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712A 3rd Street
Delhi, Iowa 52223

With a copy to:

Simmons Perrine Moyer Bergman, PLC
Attn: Matthew J. Hektoen
115 3rd Street, SE, STE 1200
Cedar Rapids, Iowa 52401

GRANTEE

Kristine Nation
23091 264th Street
Delhi, Iowa 52223

16. **Construction of Terms**. Words and phrases herein, including the acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.

17. **Counterparts**. This Agreement may be executed in two counterparts, both of which shall be deemed an original and shall constitute the entire agreement between the parties.

18. **Height Limitation**. The Owner of the Real Estate shall not construct any building or structure within that portion of the Real Estate designated as "Area A" on **Exhibit "C"**, attached hereto and incorporated herein by reference, which building or structure exceeds 916.8 feet above sea level as determined by the North American Vertical Datum of 1988.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last day and year signed below.

GRANTOR

LAKE DELHI COMBINED RECREATIONAL

FACILITY AND WATER QUALITY DISTRICT

By: _____

Steve Leonard, President

Dated: 5/21/14

GRANTEE

Kristine Nation

Kristine Nation

Dated: 5/20/14

STATE OF IOWA, Delaware COUNTY, SS

This instrument was acknowledged before me on 5/20, 2014, by Steve Leonard as President of the Board of Directors of Lake Delhi Combined Recreational Facility and Water Quality District.

NOTARIAL SEAL IOWA
LAURIE A KRAMER
Commission Number 768175
My Commission Expires
May 25, 2017

_____
Notary Public in and for said State
My Commission Expires: 5/25/17

STATE OF IOWA, Delaware COUNTY, SS

This instrument was acknowledged before me on the 20th day of May, 2014, by Kristine Nation.

_____
Notary Public in and for said State
My Commission Expires: 5/25/17

NOTARIAL SEAL IOWA
LAURIE A KRAMER
Commission Number 768175
My Commission Expires
May 25, 2017

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Exhibit "A"

The Real Estate

Parcels C and E, Part of the SW ¼ of the NW ¼ of Section 29, T88N, R4W of the Fifth P.M., Delaware County, Iowa according to the plat recorded in Book 7 Plats, Page 43; also that real estate lying generally north of Parcel E, running to the water front of Lake Delhi and then at right angles extending to the middle of Lake Delhi; and also that real estate lying generally North and West of Parcel C, running to the water front of Lake Delhi and then at right angles extending to the middle of Lake Delhi

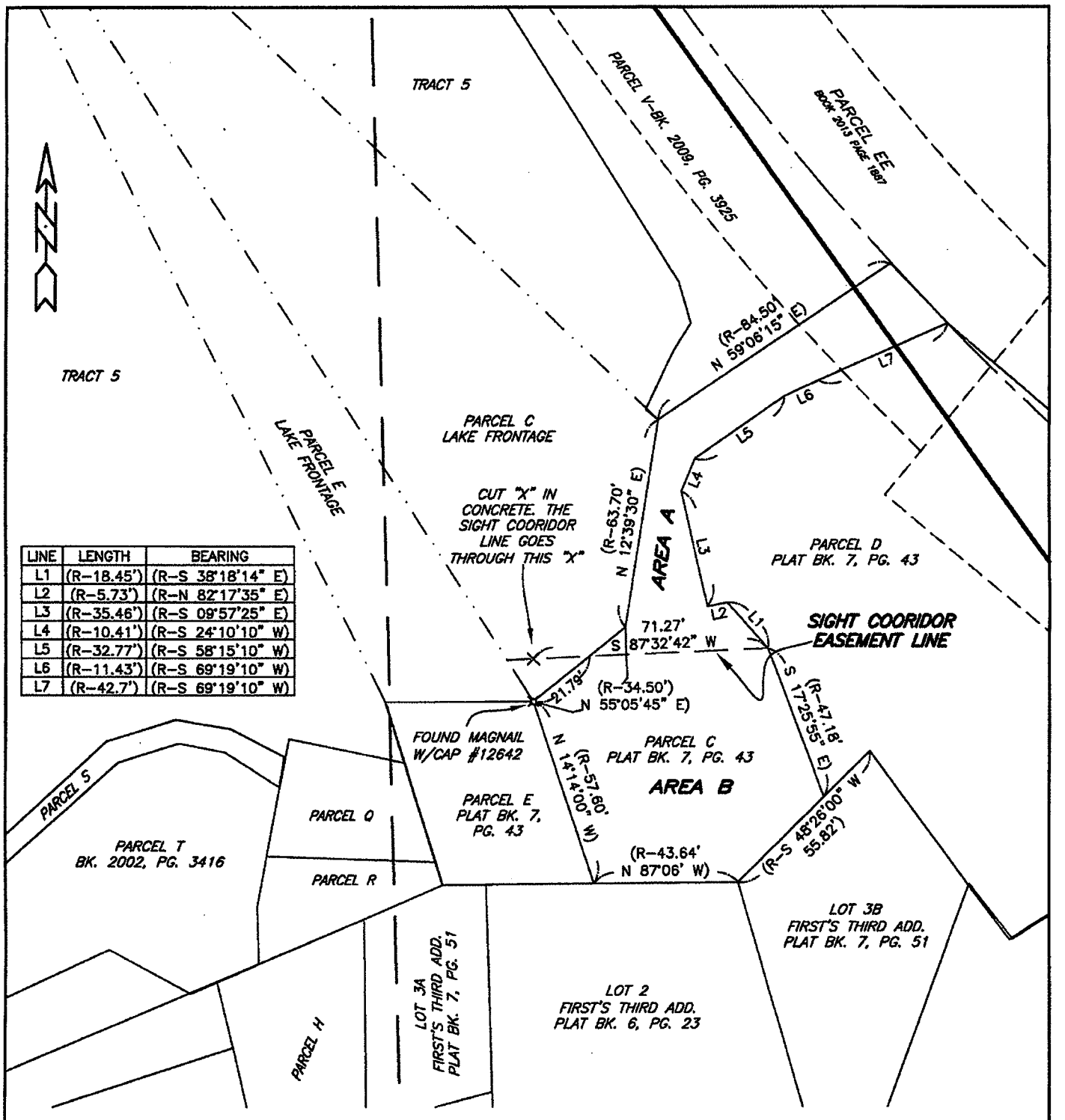
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Exhibit "B"

The Benefitted Property

Parcel D, Part of the Southwest Quarter (SW ¼) of the Northwest Quarter (NW ¼) of Section Twenty-Nine (29), Township Eighty-Eight North (T88N), Range Four West (R4W) of the Fifth Principal Meridian, Delaware County, Iowa, as described in Plat of Survey recorded in Book 7, Plats, Page 43 Delaware County Records

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LINE	LENGTH	BEARING
L1	(R-18.45')	(R-S 38°18'14" E)
L2	(R-5.73')	(R-N 82°17'35" E)
L3	(R-35.46')	(R-S 09°57'25" E)
L4	(R-10.41')	(R-S 24°10'10" W)
L5	(R-32.77')	(R-S 58°15'10" W)
L6	(R-11.43')	(R-S 69°19'10" W)
L7	(R-42.7')	(R-S 69°19'10" W)

AREA A HAS A HEIGHT RESTRICTION OF NO HIGHER THAN 916.8' NAVD 88. THERE IS NO HEIGHT RESTRICTION FOR AREA B

BURRINGTON GROUP, INC.
Civil Engineering | Land Surveying
105 W. Main Street Manchester, Iowa 52057 Phone 563-927-2434 burringtongroup.com

SIGHT COORIDOR EASEMENT EXHIBIT

Exhibit C