Recorded: 3/24/2020 at 1:11:48.0 PM
County Recording Fee: $32.00
Iowa E-Filing Fee: $3.00
Combined Fee: $35.00
Revenue Tax:
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2020 PG: 786

Prepared By/ Return To: Scott M. O'Shea, O'Shea & O'Shea, PC, 1007 Longfellow Drive, Hiawatha, 319-362-3640

WELL EASEMENT AND MAINTENANCE AGREEMENT

This Well Easement and Maintenance Agreement Easement ("Agreement") is dated this 19 day of MARCH, 2020, by and between **William L. Bohlken and Joyce Bohlken,** husband and wife (collectively hereinafter referred to as "Bohlken"), and **Randy Milroy and Tracy Milroy,** husband and wife (collectively hereinafter referred to as "Milroy").

WHEREAS, the parties herein entered into that certain Well Agreement, dated May 28, 1997, and recorded on June 2, 1997 in Book 7, Page 53 of the records of the Delaware County, Iowa Recorder's Office (herein referred to as "Prior Well Agreement").

WHEREAS, the parties herein desire to enter into to this Agreement, and herein agree the Prior Well Agreement is terminated in its entirety, and the terms and conditions of this Agreement shall control hereafter.

WHEREAS, Bohlken are the legal titleholders of the real property in **Delaware County**, Iowa locally known as 3107 326th Street, Hopkinton, IA 52237, and legally described as follows ("Bohlken Property"):

> **Lot Seven (7), Eight (8), and Nine (9), and the South thirty-two (32) feet of Lot Four (4), Sherwood & Cummings' Addition to Sand Springs, Iowa according to plat recorded in Book 1 L.D., Page 300**
>
> **AND**
>
> **Lots Ten (10), Eleven (11) and Twelve (12) of Sherwood and Cummings' Addition to Sand Springs, Iowa according to plat recorded in Book 1 L.D., Page 300**

WHEREAS, Milroy is the legal titleholder of the real property in **Delaware County**, Iowa locally known as 3104 Willow Road, Hopkinton, IA 52237, and legally described as follows ("Milroy Property"):

Lot One (1), Two (2), Three (3), and the West Six (6.0) feet of the North one hundred (100.0) feet of Lot Four (4), Sherwood & Cummings' Addition to Sand Springs, Iowa according to plat recorded in Book 1 L.D., Page 300

WHEREAS, a well, pump, and appurtenant structures are located on the Milroy Property, approximately 75 feet from the North side of the Bohlken Property.

WHEREAS, it is the intention and purpose of the undersigned parties that the water well shall be used and operated to provide an adequate supply of water for each of the properties connected thereto, for the domestic consumption of the occupants of said properties, and to assure the continuous and satisfactory operation and maintenance of the well and water distribution system for the benefit of the present and future owners, their heirs, successors and assigns of the properties connected thereto.

WHEREAS, the parties hereto desire to enter this Agreement for the purpose of reducing to writing their respective rights and obligations pertaining to said well and water distribution system.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The parties hereby agree that the water produced from the well shall be used for the benefit of the parties.

2. The expense of maintenance, repair and replacement of the water well, pump, motor, storage and housing facilities and other accessories thereto, testing, inspection and disinfection expenses, or any costs as levied by the State, Federal or County bodies shall be borne equally between the parties. In the event testing reveals significant water quality deficiency, said deficiency will be remedied with corrective measures upon the consent of the majority of the parties herein.

3. Either party herein shall have the right to request the water supplied from the shared well be sampled and tested by the local governing authority.

4. The parties shall be individually responsible for and shall individually pay the cost and expense of constructing, installing, maintaining, replacing and repairing the underground water pipelines which shall run from said water well to their respective dwellings or other terminal point. The water pipelines shall have cut-off valves at or near the water well.

5. The parties shall use the water solely as a source of domestic water for household consumption, including use for domesticated animals, including without limitation, dogs, cats and horses, and lawn and garden irrigation on the respective lots, and the parties shall not use the water from said well on or in relation to any other property or purpose other than those described above for their respective lots.

6. The owner of Bohlken Property acknowledges that the electrical service for the water well pump is metered at the residence on Milroy Property and as such agrees to pay a monthly fee of $15.00 per month to defray their proportionate share of the service cost to operate said water well pump. Said fee shall be invoiced by the owner of the Milroy Property on an annual basis, with payment due and owing from the owner of the Bohlken Property within 30 days of receiving the

annual invoice. The parties agree to review the electrical service costs annually from the date first written above and may mutually agree to adjust the monthly fee accordingly.

7. Milroy, for itself and for its successors and assigns, hereby grants to Bohlken, and its successors and assigns, a non-exclusive perpetual easement on, under, over and across the Milroy Property so that Bohlken hereto may continue usage of said water well, and for the purposes of maintenance and repair of any line connected to the well, and for access for inspection and testing.

8. Easements and rights herein granted are to be and shall be so construed as to be appurtenant to the respective property of the parties and shall become a covenant running with the title to each of said lots of real property herein described.

9. From time to time as required, the parties hereto upon their mutual consent and agreement, may make such repairs, additions, changes, or alterations to said water well and its appurtenant equipment as shall be then found necessary, but not unilaterally by any of the parties hereto, save and except for and as related to their individual water delivery systems attached to said water well. In addition, either party may unilaterally act to correct an emergency situation, which shall be defined as failure of any shared portion of the well system to deliver water upon demand.

10. The rights granted in this Agreement shall not be severable from the lots of real property described herein, nor separately conveyed therefrom without common consent of all the parties hereto, nor the waters produced from the well sold or divided, save and except as herein provided.

11. If the quantity of water used by the respective parties shall differ or vary materially from that as would be measured by equal share amounts, each party reserves the right to meter the water usage and adjust and apportion the cost of producing, use, operation, and maintenance of said water well in direct ratio to the amount of use by each of the parties.

12. Milroy, as owner of the Milroy Property wherein the well is located, herein agrees the water supply from the shared well system will continue for the benefit of Bohlken, even in the event Milroy no longer has a need for the shared well system.

13. The parties herein agree to the following prohibitions:

a. No additional connections to the shared water well shall be completed without the consent of all parties herein, and an amended to this Agreement. Upon additional connections to the shared water well, the parties herein agree corrective measures may be necessary to provide adequate water for all connections thereafter.

b. No party may locate or relocate any element of an individual sewage disposal system within 75 feet of the shared water well, or 100 feet for proposed construction.

c. No party may install landscaping or other improvements within the share water well area, or any easement area granted herein, if said improvement will impair the use of the shared water well or easements.

14. The parties herein agree to the following additional provisions:

a. any removal and replacement of pre-existing site improvements, necessary for system operation, maintenance, replacement, improvement, inspection or testing, will be at the cost of their owner, except for costs to remove and replace common boundary fencing or walls, which must be shared equally between or among.

b. the consent of a majority of all parties upon cost sharing, except in emergencies, before actions are taken for system maintenance, replacement or improvement.

c. any necessary replacement or improvement of a system elements(s) will at least restore original system performance.

d. the parties shall share in the cost for the following: the energy supply for the well pump; system maintenance, including repairs, testing, inspection and disinfection; system component replacement due to wear, obsolescence, incrustation or corrosion; and system improvement to increase the service life of a material or component to restore well yield or to provide necessary system protection.

e. no party is responsible for unilaterally incurred shared well debts of another party, except for correction of emergency situations. Emergency correction costs must be equally shared.

f. each party shall be equally responsible for the following: prompt repair of any detected leak in this water service line or plumbing system; repair costs to correct system damage caused by a resident or guest at their property; and necessary repair or replacement of the service line connecting the system to the dwelling.

g. each party shall be equally responsible for repair costs for system damage caused by persons other than a resident or guest at a property sharing the well.

h. each party shall be equally responsible for costs for abandoning all or part of the shared system so that contamination of ground water or other hazards will be avoided.

i. the parties herein agree prompt collection from all parties and prompt payment of system operation, maintenance, replacement or improvement costs

15. The rights and obligations of this Agreement are hereby perpetual, shall run with the land, shall be binding upon and shall inure to the benefit of the parties hereto, and the terms hereof shall extend to and be binding upon the respective successors, heirs, administrators, executors, and assigns of the parties hereto.

16. Arbitration. The parties acknowledge and agree that any and all disputes, claims, controversies and disagreements of any kind or nature whatsoever, arising from or relating to this Agreement or the transactions contemplated hereby, including the existence, construction, validity, interpretation, performance, non-performance, enforcement, operation or breach hereof, shall be submitted to binding arbitration before a single arbitrator selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any award or decision rendered by such arbitrator (including any decision as to which party/ies shall pay legal fees and expenses in connection with the arbitration proceedings) shall be final and binding on all parties, and

judgment on such award or decision may be entered by any party in the Iowa District Court in Delaware County or the highest state court having jurisdiction. The arbitration proceedings shall be governed by and conducted in accordance with Iowa Code Chapter 679A (2019), as amended from time to time, as supplemented by the Arbitration Rules of the American Arbitration Association, to the extent not inconsistent with Chapter 679A. The provisions of this Agreement shall be a complete bar and defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to any controversy or dispute which is arbitrable as set forth in this Agreement. The parties shall be equally responsible for any arbitration costs.

17. This is the entire Agreement of the parties as to the subject matter hereof and supersedes all prior negotiations and agreements. No amendment to this Agreement is valid unless in writing and signed by the parties, but in no event shall be amended during the term of a federally insured or guaranteed mortgage on any property served by the shared water well except for the purpose of amending the types of usage of the water therein. This Agreement may be executed in any number of counterparts with the same force and effect as if all signatures were appended to one document, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BOHLKEN:

William L. Bohlken

Joyce Bohlken

STATE OF IOWA, COUNTY OF DELAWARE) ss:

This record was acknowledged before me this 19 day of March, 2020, by William L. Bohlken and Joyce Bohlken, husband and wife.

Notary Public in and for the State of Iowa

NOTARIAL SEAL IOWA

MICHAEL W. McDONOUGH
Commission Number 138581
My Commission Expires
February 6, 2022

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MILROY:

Randy Milroy

Tracy Milroy

STATE OF IOWA, COUNTY OF Jones) ss:

This record was acknowledged before me this 19th day of March, 2020, by Randy Milroy and Tracy Milroy, husband and wife.

Cheryl Peters
Notary Public in and for the State of Iowa

NOTARIAL SEAL IOWA
CHERYL PETERS
Commission Number 197212
My Commission Expires
7-2-22