

BK: 2021 PG: 785
Recorded: 2/25/2021 at 2:31:54.0 PM
Pages 4
County Recording Fee: \$22.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$25.00
Revenue Tax:
LISA SMITH RECORDER
Madison County, Iowa

RIGHT OF FIRST REFUSAL
Recorder's Cover Sheet

Prepared By: David L. Wetsch
699 Walnut Street, Suite 1600
Des Moines, IA 50309
(515) 246-4555

Taxpayer Information: N/A

Return Document To: David L. Wetsch
699 Walnut Street, Suite 1600
Des Moines, IA 50309

Grantors:
Debra K. McCalley

Grantees:
Kading Properties, L.L.C.

Legal Description: See Page 2.

Document or instrument number of previously recorded documents: N/A

RIGHT OF FIRST REFUSAL

THIS AGREEMENT ("Agreement"), made and entered into and effective on this 17th day of February, 2021, by and between DEBRA K. McCALLEY, a single person (hereinafter referred to as "Grantor") and KADING PROPERTIES, L.L.C., an Iowa limited liability company (hereinafter referred to as "Grantee").

RECITALS:

A. Grantor is the owner of the following described real estate in Madison County, Iowa:

Lot 2, Block 1, REPLAT OF LOT 5 BIRCHWOOD ESTATES PLAT 1,
an Official Plat, Winterset, Madison County, Iowa;

(the "Property");

B. Grantor and Grantee previously entered into a Purchase Agreement for Grantee to purchase the above described real estate, but one of the contingencies of such Offer was the ability to obtain rezoning which was recently denied by the Planning and Zoning Commission of Winterset, Iowa. The contingencies in the Purchase Agreement have not been met, but the parties to this Agreement desire to now create this Right of First Refusal in favor of Grantee, its successors and assigns.

NOW THEREFORE, in consideration of the foregoing, the sum of **Two Thousand Dollars (\$2,000.00)** previously paid to Grantor as earnest money under the Purchase Agreement, and other good and valuable consideration, the sum and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **GRANT OF RIGHT OF FIRST REFUSAL.** Grantor does hereby subject the Property to the following right of first refusal:

Grantee, its successors or assigns, shall have a continuous/continuing right of first refusal to purchase the Property in accordance with the terms of this section. If Grantor receives and desires to accept a bona fide offer to sell all or a portion of the Property, Grantor shall deliver a notice to Grantee stating the name of such offeror with a copy of the terms and conditions of such offer attached. Grantee shall then have the right to purchase the Property on the same terms and conditions set forth in Grantor's notice, provided that Grantee delivers written notice to Grantor of its election to do so within ten (10) days after receipt of such notice from Grantor and provided that Grantee consummates such transaction within thirty (30) days after receipt of such notice. If Grantee does not respond to any such notice of offer within ten (10) days or if Grantee chooses not to exercise its rights hereunder, Grantor shall be permitted to sell the Property pursuant to the terms and conditions set forth in the offer, or pursuant to terms that are substantially similar to the terms in the offer, and this right of first refusal shall become null and void and any and all consideration shall be forfeited to Grantor.

Notwithstanding any other provisions contained herein, the right of first refusal shall be freely assignable by BUYER, without restriction, and said right of first refusal shall automatically transfer to and be exercisable by any "related entity" of BUYER. A "related entity" shall be deemed any entity that is affiliated or owned by BUYER or is otherwise the successor in interest to the BUYER due to any termination or dissolution of the BUYER by operation of law or otherwise.

Notwithstanding any other provisions contained herein, the right of first refusal referenced and anticipated herein shall in no way be triggered or effective with regards to any transfer of the Easement Property from the Sellers to any direct heirs of the Sellers. However, this right of first refusal shall continue and be effective and exercisable by BUYER following any transfer of the Easement Property from the Sellers to any direct heirs of the Sellers.

2. **ASSIGNMENT.** The above right of first refusal is for the benefit of Grantee, its successors and assigns, and shall be binding upon Grantor, its successors, and assigns.

3. **BROKERAGE COMMISSION.** Each party represents and warrants to the other party that such warranting party has not incurred any obligation to pay any brokerage commissions by reason of the transaction contemplated hereunder. Each party shall indemnify and hold harmless the other party against any and all loss, cost, damage, expense and liability whatsoever based upon any such commitment by such indemnifying party.

4. **TIME OF THE ESSENCE.** It is understood and hereby agreed that time is of the essence of this Agreement.

5. **APPLICABLE LAWS.** This Agreement and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Iowa.

6. **FURTHER ASSURANCES.** Each party hereby agrees to execute all such further instruments and documents, and to take all such further action as any other party may reasonably require in order to give effect to the provisions and purposes of this Agreement.

7. **AGREEMENT INTERPRETATION.** This Agreement has been freely and fairly negotiated by the parties hereto and has been reviewed and discussed by each of the parties, each of whom has had the full opportunity to modify the draftsmanship hereof and, therefore, the terms of this Agreement shall be construed and interpreted without any presumption or other rule requiring construction or interpretation against the interest of the party causing this Agreement to be drafted.

8. **NOTICE:** For purposes of this Agreement, all notices required herein, including but not limited to notice of the exercise of the right of first refusal, shall be in writing and signed by the sender and shall be delivered either by: (i) personal delivery, (ii) certified mail, return receipt requested, or (iii) by email provided the sender obtains proof of delivery, at the following address:

GRANTEE:

Kading Properties, L.L.C.
Attention: Karie Ramsey, Manager
7008 Madison Avenue
Urbandale, IA 50322

GRANTOR:

Debra K. McCalley
2709 Autumn Woods Drive
Cedar Falls, IA 50613

9. **ENTIRE AGREEMENT.** This Agreement and the instruments to be executed and delivered pursuant hereto, constitute the entire understanding with respect to the subject matter hereof. The headings herein are for convenience only, and shall not affect the interpretation of any of the provisions hereof.

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

GRANTEE
KADING PROPERTIES, L.L.C.

By: *Karie Ramsey*
Karie Ramsey, Manager

GRANTOR

Debra K. McCalley
DEBRA K. McCALLEY

STATE OF IOWA)
)ss
COUNTY OF POLK)

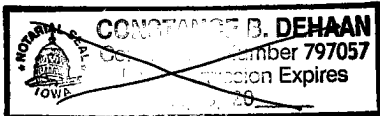
This record was acknowledged before me this 16th day of February, 2021, by Karie Ramsey, as Manager of Kading Properties, L.L.C.



Hilda C. Smith
Signature of Notary Public

STATE OF IOWA)
)ss
COUNTY OF Black Hawk)

This record was acknowledged before me this 17th day of February, 2021, by Debra K. McCalley, a single person.



Constance B. Dehaan
Signature of Notary Public

