



Document 2017 1158

Book 2017 Page 1158 Type 06 049 Pages 5

Date 4/13/2017 Time 12:00:09PM

Rec Amt \$27.00

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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

CHEK

Prepared by Samuel I. Kreamer, 7155 Lake Drive, Suite 200, West Des Moines, Iowa 50266, 515-727-0900

Address Tax Statements: Luanne Sellner Trust 5234 Windsor Court, Pleasant Hill, Iowa 50327

WHEN RECORDED RETURN TO: Samuel I. Kreamer, 7155 Lake Drive, Suite 200, West Des Moines, Iowa 50266, 515-727-0900

3/13

PROPERTY USE RESTRICTION AGREEMENT

This Property Use Restriction Agreement (this "Agreement") is dated for reference this ^{12th} day of April, 2017 and is made by and between James Nible and Judy Broxmeyer (collectively "Seller") whose address for the purposes of this Agreement is 2823 105th Street, Van Meter, Iowa 50261, and Luanne Sellner as Trustee of the Luanne Sellner Trust U/A DTD September 2, 2016 (collectively "Buyer") whose address for the purposes of this Agreement is 5234 Windsor Court, Pleasant Hill, Iowa 50327. Seller and Buyer may individually be referred to as a "Party" or collectively as the "Parties."

WHEREAS, Seller is presently the owner of certain property legally described as follows (the "Broxmeyer Property"):

A tract of land including parts of Government Lots Five (5) and Seven (7) in Section Six (6), in Township Seventy-seven (77) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa, more particularly described as follows: Commencing at the West Quarter (1/4) corner of said Section Six (6); thence North 00°16'01" West 3.82 feet along the West line of said Section Six (6) to the approximate centerline of the existing county road and the intersection of the fence line (extended) on the North line of said Government Lot Five (5); thence South 88°21'51" East 24.47 feet along the chord of a curve to the right of said county road having a radius of 1102.98 feet and a delta of 01°16'17" to the point of beginning; thence North 82°13'33" East 2406.78 feet along the North line of Government Lots Five (5) and Seven (7); thence South 312.06 feet to a point on the approximate centerline of said county road; thence South 79°59'02" West 226.44 feet along said center line; thence South 79°13'16" West 1089.57 feet along said centerline to a point of curve; thence Northwesterly along a curve to the right having a radius of 868.57 feet an arc length of 523.20 feet to a point of tangent; thence North 66°14'32" West 195.11 feet along said centerline to a point of curve; thence Northwesterly along a curve to the left having a radius of 1102.98 feet and an arc length

of 413.66 feet to the point of beginning, and containing 15.59 acres more or less.

WHEREAS, contemporaneously herewith Seller is selling part of the above-described “Broxmeyer Property” to Buyer (hereafter referred to as the “Sellner Trust Property”), said “Sellner Trust Property” being more particularly described as follows, to-wit:

A part of Government Lot Seven (7) located in Section Six (6), Township Seventy-seven (77) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa, containing 4.77 acres, as shown in the Retracement Plat of Survey filed in Book 2016, Page 2999 on October 7, 2016 in the Office of the Recorder of Madison County, Iowa



WHEREAS, after the sale of the “Sellner Trust Property” to the Buyer, Seller will retain ownership of the following-described property, whose boundary is adjacent to and abutting the “Sellner Trust Property”:

A tract of land including parts of Government Lots Five (5) and Seven (7) in Section Six (6), in Township Seventy-seven (77) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa, more particularly described as follows: Commencing at the West Quarter (¼) corner of said Section Six (6); thence North 00°16'01" West 3.82 feet along the West line of said Section Six (6) to the approximate centerline of the existing county road and the intersection of the fence line (extended) on the North line of said Government Lot Five (5); thence South 88°21'51" East 24.47 feet along the chord of a curve to the right of said county road having a radius of 1102.98 feet and a delta of 01°16'17" to the point of beginning; thence North 82°13'33" East 2406.78 feet along the North line of Government Lots Five (5) and Seven (7); thence South 312.06 feet to a point on the approximate centerline of said county road; thence South 79°59'02" West 226.44 feet along said center line; thence South 79°13'16" West 1089.57 feet along said centerline to a point of curve; thence Northwesterly along a curve to the right having a radius of 868.57 feet an arc length of 523.20 feet to a point of tangent; thence North 66°14'32" West 195.11 feet along said centerline to a point of curve; thence Northwesterly along a curve to the left having a radius of 1102.98 feet and an arc length of 413.66 feet to the point of beginning, and containing 15.59 acres more or less; **EXCEPT** a part of said Government Lot Seven (7), containing 4.77 acres, as shown in the Retracement Plat of Survey filed in Book 2016, Page 2999 on October 7, 2016 in the Office of the Recorder of Madison County, Iowa.

WHEREAS, the Parties have agreed that the use of the “Sellner Trust Property” shall be restricted as provided herein, which shall also be referenced in the Deed Conveying the property.

IN CONSIDERATION OF the Sale of the Property by Seller to Buyer, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Use Restriction.** There shall be no use of the “Sellner Trust Property”, or conduct of activities thereon, other than those allowed in a “Residential District” as defined in Section

10 of the Madison County Zoning Ordinance as presently existing or hereafter amended. The foregoing shall not be construed to prohibit the raising of animals and plants primarily for the personal use and enjoyment of the owners or occupants of the subject property, but shall be construed to prohibit engaging in the business of "Agriculture" as defined in Section 4(2) of the Zoning Ordinance of Madison County as presently existing or hereafter modified.

2. **Intended Beneficiaries**. The Parties acknowledge and agree that the foregoing use restriction is intended to benefit Seller, and it may be enforced by Seller, as well as their successors.
3. **Continuity of Interest**. It is intended that the Use Restriction will "run with the land" and be binding on Buyer as well as on Buyer's successors in interest until such time as the Use Restriction shall be extinguished by operation of law.
4. **Enforcement**. This Agreement is to be performed in whole or in part in Madison County, Iowa, and shall be enforceable in the Iowa District Court for Madison County or the United States District Court for the Southern District of Iowa.

The Parties to this Agreement agree that in the event that it shall be necessary to enforce the terms of this Agreement that, in addition to, and not in lieu of, any other relief to which they may otherwise be entitled, injunctions, and judgments of specific performance may be awarded.

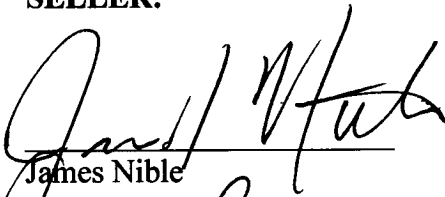
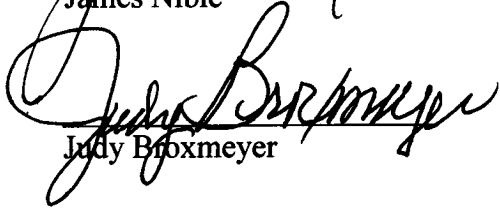
To the maximum extent allowed by law, the Parties to this Agreement waive the posting of any bond.

5. **Construction/Captions**. This Agreement is made in Iowa, to be performed in Iowa and shall be construed in accordance with Iowa law. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.
6. **Representations and Warranties**. Each of the Parties hereby make the following representations, warranties and covenants to all of the other Parties which shall survive indefinitely:
 - A. They have read this document;
 - B. They understand their obligations pursuant to this Agreement, and agree to fully perform their obligations as described herein;
 - C. Prior to signature hereof, they have sought such independent counsel and advice as they deem necessary;
 - D. They have signed this document as their voluntary act and deed;

- E. That the signatory is fully authorized to sign this document;
 - F. That all requisite consents have been obtained prior to execution hereof, and that the execution and compliance herewith does not violate any statute, ordinance rule or contract which is binding upon such signatory; and
 - G. They acknowledge that Samuel I. Kreamer, and the Kreamer Law Firm, P.C., law firm have represented Seller and not Buyer.
7. **Notice.** Any notice required or permitted to be given pursuant to this Agreement, or any legal notice given with regard to this Agreement, shall be given to the applicable party at the address listed above, or such other address as any party shall have provided the other at any time and from time to time in writing. Notices shall, unless otherwise specified in writing, be given in written form, and may be transmitted by regular mail, certified mail, overnight carrier, facsimile, or e-mail. An additional copy of all notices shall be given to Samuel I. Kreamer, J.D., C.P.A., 7155 Lake Drive, Suite 200, West Des Moines, Iowa 50266; e-mail address: sikjdcpa@kreamerlaw.com.
8. **Severability.** Any provision hereof which cannot be enforced or reformed, shall be deemed to be severed from the remaining portions, provisions or parts of this Agreement, and shall not affect the validity or enforceability of such remaining portions, provisions or parts of this Agreement.
9. **Amendment.** No amendment or modification of this Agreement shall be deemed effective unless or until executed in writing by the parties hereto with the same formality attending execution of this Agreement.
10. **Assignment/Binding Effect.** This Agreement shall be binding on the Parties and their successors.
11. **Additional Instruments.** Each of the parties hereto agrees to execute any and all further instruments and documents and to take all further actions as the other parties may hereafter reasonably require in order to effect the terms and purposes of this Agreement.
12. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
13. **Failure to Consummate Transaction.** If for any reason the transaction contemplated in the Real Estate Contract (Short Form) between Seller and the Luann Sellner Trust shall fail to close, this Agreement shall be null, void, and of no import or effect.

IN WITNESS WHEREOF, the Parties have signed this Agreement.

SELLER:


James Nible

Judy Broxmeyer

BUYER:

Luanne Sellner Trust U/A DTD September 2, 2016

By: 
Luanne Sellner, Trustee

STATE OF IOWA)

SS.

COUNTY OF Polk)

On this 12th day of April, 2017, before me a notary public in an for the State of Iowa, personally appeared James Nible and Judy Broxmeyer, to me known to be the same person described in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.




NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

STATE OF IOWA)

) SS.

COUNTY OF Polk)

On this 6th day of April, 2017, before me a notary public in an for the State of Iowa, personally appeared Luanne Sellner, Trustee of the Luanne Sellner Trust U/A DTD Sep;tember 2, 2016, to me known to be the same person described in and who executed the foregoing instrument, and acknowledged that she executed the same as the voluntary, binding act and deed of the Luanne Sellner Trust.




NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

