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MADISON COUNTY IOWA

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ENCROACHMENT EASEMENT

Preparer Information: Edward H. Arp, PLA
Civil Engineering Consultants, Inc.
2400 86th Street, Unit 12, Des Moines, Iowa 50322

Taxpayer Information: Everett L. Kenoyer
1193 Warren Avenue, Cumming, Iowa 50061

✓ **Return Document To:** Edward H. Arp, PLA
Civil Engineering Consultants, Inc.
2400 86th Street, Unit 12, Des Moines, Iowa 50322

Grantor: Everett L. Kenoyer
1193 Warren Avenue, Cumming, Iowa 50061

Grantee: Everett L. Kenoyer
1193 Warren Avenue, Cumming, Iowa 50061

Legal Description:
See Page 2.

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

ENCROACHMENT EASEMENT

THIS ENCROACHMENT EASEMENT (“Easement”) is made this 28th day of November, 2017, between Everett L. Kenoyer (“Grantor”) and Everett L. Kenoyer (“Grantee”).

RECITALS

WHEREAS, Grantor is the owner of real property situated in Madison County, Iowa and legally described as follows:

Lot 1, Amended Kenoyer’s Cherry Creek Estates, an Official Plat, now included in and forming a part of Madison County, Iowa (“Lot 1”); *SEC 12-77-26 EHA*

WHEREAS, Grantee is the owner of real property situated in Madison County, Iowa and legally described as follows:

Lot 2, Amended Kenoyer’s Cherry Creek Estates, an Official Plat, now included in and forming a part of Madison County, Iowa (“Lot 2”); *SEC 12-77-26 EHA*

WHEREAS, it has been determined by Grantor and Grantee that construction of a septic sewer line running from Lot 2 over and across a portion of Lot 1 to serve Lot 2 is necessary for proper operation.

WHEREAS, Grantor has agreed to allow the septic sewer line encroachment to remain in place subject to certain restrictions.

NOW, THEREFORE, in consideration of the mutual obligations set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Encroachment Easement. Grantor does hereby sell, assign, grant and convey to Grantee a non-perpetual encroachment easement for the purposes of maintaining a septic sewer line upon, over, under, through and across and generally within the northwest quadrant of Lot 1 as set forth in this document and made a part hereof (“Easement Area”).
2. Conditions of Encroachment Easement. Any encroachment by Grantee into Lot 1 shall be subject to the following:
 - a. No encroachment authorized hereunder shall be expanded beyond the Easement Area which covers the septic sewer lines as initially installed.
 - b. No structure or improvement other than the existing septic sewer line shall be allowed to encroach onto Lot 1 at any time.
 - c. In the event it becomes necessary to remove and/or replace the line for any reason, any newly constructed or reconstructed septic sewer line shall be placed wholly within the Easement Area.
 - d. In the event the septic sewer line is no longer necessary for the use and enjoyment of Lot 2, the encroaching septic sewer line shall be removed and disposed of by Grantee, at Grantee’s sole cost

and expense, and this Easement shall automatically and unconditionally terminate without further action of either party hereto.

3. Compliance with Municipal Laws. Any encroachment authorized hereunder shall be in compliance with and conform to the ordinances, rules, statutes and regulations of Madison County in effect from time to time.

4. Right of Access. The Grantee shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described.

5. Maintenance. In the event the septic sewer line is in need of inspection, maintenance or other repair, Grantor grants unto Grantee a limited license to enter the Easement Area for such inspection, maintenance or repair. Grantee shall keep and preserve the Easement Area in good repair and condition at all times, including all improvements contained therein, and shall not change the grade, elevation or contour of any part of Lot 1 without obtaining the prior written consent of Grantor.

6. Restoration of Property. Upon completion of any inspection, maintenance or repair of any improvements located within the Easement Area, Grantee shall restore the Easement Area in good and workmanlike manner to a condition comparable to its condition before such inspection, maintenance or repair, including replacement of all ground cover and landscaping contained therein.

7. Liability for Improvements and Damage. In accepting this Easement, Grantee agrees that any damage or injury done to any improvements within the Encroachment Area, or any damage or injury done to the Easement Area or surrounding Lot 1, by any person or thing, including, but not limited to any sewer backup or spillage, shall be promptly repaired or replaced by Grantee, at its sole expense, and the Grantor shall not be liable for any such damage or injury.

8. Hold Harmless. The Grantee agrees to indemnify and hold harmless the Grantor, its employees, officers, members, managers, agents, representatives, contractors, insurers and attorneys from and against any and all claims or demands for liability, loss, damage, costs, expenses or attorney's fees of any kind for actions or omissions of the Grantee arising out of or in connection with any undertaking arising out of or otherwise related to this Easement.

9. Amendment. The terms of this Agreement may be amended by mutual agreement of the parties hereto, but any such amendment shall be in writing.

10. Binding Effect. All provisions of this instrument including benefits and burdens, run with the land are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto. If any provision hereof is for any reason unenforceable by a court of law, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provisions had never been contained herein.

11. Attorney's Fees. The parties may enforce this instrument by appropriate action, and should they prevail in such litigation, they shall recover as part of their costs the reasonable attorney's fees incurred in such litigation.

12. Jurisdiction and Venue. The parties agree the District Court of the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement and said parties consent to the jurisdiction of the person being in Madison County, Iowa.

IN WITNESS WHEREOF, the parties have executed this Easement as of the date first above written.

GRANTOR:

Everett L. Kenoyer

By: *Everett L. Kenoyer*

GRANTEE:

Everett L. Kenoyer

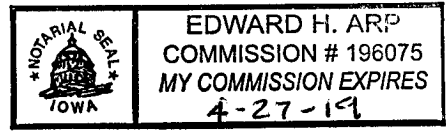
By: *Everett L. Kenoyer*

STATE OF IOWA)
) SS
COUNTY OF MADISON)

This instrument was acknowledged before me on this 28 day of November, 2017, by Everett L. Kenoyer.

Edward H. ARP
Notary Public in and for said State of Iowa

STATE OF IOWA)
) SS
COUNTY OF MADISON)



This instrument was acknowledged before me on this 28th day of November, 2017, by Everett L. Kenoyer.

Edward H. ARP
Notary Public in and for said State of Iowa

