



Document 2019 362

Book 2019 Page 362 Type 06 001 Pages 13
Date 1/25/2019 Time 2:31:02PM
Rec Amt \$67.00

INDX
ANNO
SCAN
CHEK

LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

Prepared by and Return to: Conner L. Wasson, 100 Court Avenue, Suite 600, Des Moines, Iowa 50309 (515) 246-0341

**NON-EXCLUSIVE ACCESS, DRAINAGE, AND PUBLIC UTILITY
EASEMENT AGREEMENT**

THIS NON-EXCLUSIVE ACCESS, DRAINAGE, AND PUBLIC UTILITY EASEMENT AGREEMENT (this "Agreement") is made and entered into as of January 25, 2019 (the "Effective Date"), by and between Katherine M. Wilkie, Single; Ward J. Wilkie, Jr., Single; Janette Kay Wilkie Thompson, Single; Thomas R. Spina, Single; Lester John Wilkie, Single; Jeffree Allen Wilkie, Single; and the Estate of Noel R. Nelson (collectively, the "Grantors"), and the Winterset Community School District, an Iowa school corporation (the "Grantee").

RECITALS

WHEREAS, the Grantors own certain real property legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Burdened Property"); and

WHEREAS, the Grantee owns certain real property commonly known as 624 Husky Dr., Winterset, IA 50273 (the "Benefited Property"), located adjacent to and immediately east of the Burdened Property and legally described on Exhibit B attached hereto and incorporated herein by this reference; and

WHEREAS, the Grantee is making certain improvements to its building located on the Benefited Property that will require the Grantee to obtain access across the Burdened Property to travel to and from South 9th Street to the Benefited Property; and

WHEREAS, the Grantee desire to construct a driveway and other infrastructure improvements across the Burdened Property to obtain such access (the "Improvements"); and

WHEREAS, the Grantors have agreed to grant the Grantee a perpetual access easement for ingress and egress, on the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Access Easement. The Grantors hereby grant and convey to the Grantee and Grantee's customers, invitees, lessees, sublessees, employees, agents, licensees, contractors, vendors, and

suppliers a perpetual access easement for unrestricted ingress and egress on, over, and across the Burdened Property. The Grantee may construct, operate, maintain, repair, replace, access, and use a paved road across the Burdened Property.

2. Grant of Drainage Easement. The Grantors hereby grant and convey to the Grantee a perpetual drainage easement to permit the unrestricted flow of surface water from the Benefited Property across the Burdened Property.

3. Grant of Public Utility Easement. The Grantors hereby grant and convey to the Grantee a perpetual public utility easement to permit the construction, reconstruction, repair, improvement, and maintenance of public utilities, together with necessary appurtenances thereto under, over, through, and across the Burdened Property.

4. Grantors' Use of the Burdened Property. The Grantor, its successors and assigns, shall have the right to use the Burdened Property insofar as such use does not, in the reasonable judgment of the Grantee, unreasonably impair, interfere with or obstruct the use of the Burdened Property by the Grantee, or their successors and assigns.

5. Restrictions. The Grantors shall ensure that no barricades, signs, fences, or other dividers will be constructed in, over, or upon the Burdened Property that would inhibit the Grantee's proper use of such Burdened Property, and that nothing will be done to prohibit or discourage the free and uninterrupted access over and across the Burdened Property. The Grantors shall not erect any structure or plant, nor permit any trees or vegetative growth in the Burdened Property which might reasonably be expected to obstruct or impair the proper use of such Burdened Property for its intended purpose. The Grantors shall not allow any hazardous condition to arise or persist within the Burdened Property. The Grantors shall not allow any use of the Burdened Property which might reasonably be expected to obstruct or impair the use of such Burdened Property by the Grantee.

6. Construction and Maintenance Expenses. The Grantee shall be responsible for the timely maintenance, repair, and replacement of the Improvements on the Burdened Property. Notwithstanding the foregoing, the Grantors understand and acknowledge the Grantee does not regularly maintain, including snow and ice removal, the Burdened Property when school is not in session according to the official academic calendar of the Winterset Community School District.

7. Indemnity. Each party (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other parties from and against all damages, liabilities, actions, claims, expenses (including, but not limited to, court costs and reasonable attorneys' fees), losses, judgments, liens and causes of action actually incurred by the other parties from loss of life, bodily injury, and property damage arising from or out of any third-party claim alleging material breach or non-fulfillment of any material representation, warranty, or covenant under this Agreement by the Indemnifying Party.

8. Easement and Covenants Run With the Land. The Grantors hereby declare that the Benefited Parcel and the Burdened Parcel shall be held, sold, and conveyed subject to the restrictions, covenants, and easements contained herein, all of which shall be covenants running with the land and shall be binding upon, and inure to the benefit of, all parties having any right, title, and interest in said properties, or any part thereof, and their respective successors and assigns.

9. Amendment; Modification. This Easement shall only be amended by the written consent and mutual agreement of all the record owners of the Benefited Parcel and the Burdened Parcel. Any such

modification or amendment shall be effective when duly recorded in the records of the Recorder of Madison County, Iowa.

10. Governing Law. In the event of a dispute, this Easement shall be construed and enforced in accordance with the laws of the State of Iowa and the parties hereby consent to the jurisdiction of the parties and the subject matter being in Madison County, Iowa.

11. Attorneys' Fees. In the event of a dispute, either party may enforce this Easement by appropriate legal action and the prevailing party shall recover from the other reasonable attorneys' fees incurred in such legal action.

12. Words and Phrases. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, according to the context.

[SIGNATURES ON FOLLOWING PAGES]

EXHIBIT A

BURDENED PROPERTY

A tract of land located in the Southeast Quarter (1/4) of the Northwest Quarter (1/4) of Section One (1), Township Seventy-five (75) North, Range Twenty-eight (28) West of the 5th P.M., City of Winterset, Madison County, Iowa, containing 0.32 acres, more or less, as shown in Plat of Survey filed in Book 2018, Page 3264 on October 9, 2018, in the Office of the Recorder of Madison County, Iowa.

EXHIBIT B

BENEFITED PROPERTY

**Lots One (1) and Two (2) of Nelson Acres Plat 3, an Addition to the City of Winterset,
Madison County, Iowa.**

01530037-1\17982-027

IN WITNESS WHEREOF, Grantors and Grantees have duly executed this Easement as of the Effective Date.

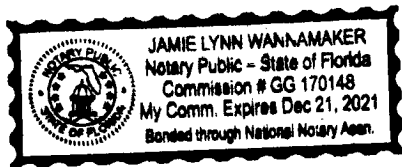
GRANTOR

Katherine M. Wilkie
Katherine M. Wilkie

STATE OF Florida)
COUNTY OF Bravard)^{SS}

The foregoing record was acknowledged before me this 1 day of November, 2018 by Katherine M. Wilkie.

Jamie Lynn Wannamaker
NOTARY PUBLIC
My commission expires: December 21, 2021



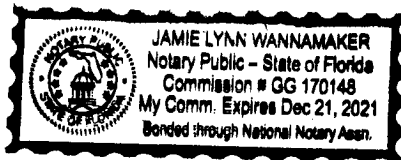
GRANTOR

Janette Kay Wilkie Thompson
Janette Kay Wilkie Thompson

JKW

STATE OF Florida)
COUNTY OF Bravard) SS

The foregoing record was acknowledged before me this 1 day of November, 2018 by Janette Kay Wilkie Thompson.



Jamie Lynn Wannamaker
NOTARY PUBLIC
My commission expires December 21, 2021

