Preparer Information: Steven H. Krohn, P.O. Box 249, Council Bluffs, IA 51502-0249 (712) 328-1833
Return Document to: Steven H. Krohn, P.O. Box 249, Council Bluffs, IA 51502-0249

AGREEMENT FOR PERMANENT EASEMENT FOR RETAINING WALL

Agreement made effective the ____ day of _____, 2023, between The City of Council Bluffs, a Municipal Corporation (the "Grantor") and David K. Reed, a single person and Lisa R. Parmley, a single person (the "Grantees").

RECITALS

A. Grantor is the legal owner of certain real estate situated in Pottawattamie County, Iowa, legally described as Lot 105 in the Original Plat to The City of Council Bluffs, Pottawattamie County, Iowa (the "Grantor's Real Estate").

B. Grantees are the legal owners of certain other real estate situated in Pottawattamie County, Iowa, described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Grantees' Real Estate").

C. The Grantees' Real Estate is located to the North of the Grantor's Real Estate and adjoins the Grantor's Real Estate.

D. Grantees desire to install a retaining wall on the Grantor's Real Estate to help control drainage onto Grantees' Real Estate.

E. The Grantor and the Grantees now desire to enter into this Agreement to provide to Grantees an easement on and over a portion of the Grantor's Real Estate to locate, construct, install and maintain a retaining wall on a portion of the Grantor's Real Estate on the terms and conditions as stated herein.

NOW, THEREFORE, in consideration of valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the parties and in further consideration of the mutual covenants and agreements hereinafter set forth, it is mutually agreed:

1. Grantor, each for itself and its successors, and assigns does hereby grant unto the Grantees, for the Grantees' benefit, and for the benefit of the Grantees' respective heirs,

successors, and assigns, a perpetual easement over, under and across a portion of the Grantor's Real Property described in paragraph 3 below (and hereinafter defined as the "Easement Area") to construct, alter, maintain, install, inspect, dig, repair, replace, use, operate and remove, a retaining wall (hereinafter the "Retaining Wall").

2. Grantor, each for itself and its successors, and assigns does hereby grant unto the Grantees, for the Grantees' benefit, and for the benefit of the Grantees' contractors, agents, employees, public utility companies and representatives a temporary easement to provide access to, and to provide ingress and egress to the Easement Area, (as said term is defined in paragraph 3 herein below) and for use as working space, all in connection with the construction of the Retaining Wall on the Easement Area (as said term is defined in paragraph 3 herein below).

3. The Easement Area is as follows: The North Ten feet of Grantor's Real Estate and is hereinafter referred to as the "Easement Area".

4. Grantor and Grantees acknowledge and agree that Retaining Wall shall be located in the Easement Area. Neither Grantees nor Grantees' successors, assigns, guests, invitees or licensees shall at any time or use the Easement Area for any purpose other than for the purposes stated herein above.

5. Grantees and their respective heirs, successors, and assigns shall bear and promptly pay all costs and expenses of construction, repair, maintenance, alteration and replacement of the Retaining Wall unless any such costs and expenses are caused by the Grantor's violation of the terms of this Agreement or other wrongful act of the Grantor.

6. Grantee shall construct, repair, replace, alter and/or maintain the Retaining Wall in accordance with all laws, regulations; and the regulations, conditions of Grantor or specifications as directed by the Grantor.

7. Prior to the initial installation and construction and any subsequent replacement and/or alteration of the Retaining Wall by Grantees, plans for said installation, construction, replacement and/or alteration shall be submitted to and approved by Grantor.

8. All work to be performed by Grantees shall be in performed accordance with plans approved by Grantor and shall be completed in a workman-like manner free of claims and liens. Upon completing construction, repair, alteration, replacement or maintenance of the Retaining Wall, Grantee shall remove all debris and restore the surface of the Easement Area as nearly as possible to the condition in which it was at the commencement of such work.

9. The easement herein granted to the Grantees and the Grantees' respective heirs, successors, and assigns is not an exclusive easement and the Grantor and the Grantor's respective heirs, successors, and assigns retain and have the right to use the Easement Area for the benefit of the Grantor's Real Estate in any manner that does not interfere with Grantees' and the Grantees' respective heirs, successors, and assigns' exercise of the rights granted to Grantees and the Grantees' respective heirs, successors, and assigns under this Agreement. Grantor shall at all times have the right to use and occupy the Easement Area; provided, that use of the Easement

Area by Grantors shall not in any fashion hinder, disrupt or interfere with the use or proper functioning of the Retaining Wall to help control drainage onto Grantee's Real Estate.

10. Grantors shall insure that no encroachments shall be made on the Easement Area, that interfere with the proper operation of the Retaining Wall to help control drainage onto Grantee's Real Estate and no use shall be made of the Easement Area in any fashion which hinders, disrupts or interferes with the use or proper functioning of Retaining Wall to help control drainage onto Grantee's Real Estate.

11. Grantees shall have right of ingress and egress to the Easement Area as may from time to time be necessary to insure the proper functioning of the Retaining Wall to help control drainage onto Grantee's Real Estate. Grantees shall exercise Grantees' rights of ingress and egress to the Easement Area so as to minimize interference with Grantor's use of the Grantor's Real Property.

12. The Grantees do hereby agree to indemnify and to hold the Grantor harmless from and against any and all liability, claims, liens, demands or causes of action for personal injury or property damage, including attorney fees resulting from or arising out of or attributable to the existence of the Retaining Wall on the Easement Area or to any maintenance or repair undertaken thereon or with regard to any other matter arising out of or related to the existence of the Retaining Wall on the Easement Area or the existence of this agreement.

13. In the event that any action is filed in relation to this Agreement, the unsuccessful party in that action shall pay to the successful party, in addition to all the sums that either party may be called upon to pay, a reasonable sum for the successful party's attorney fees.

14. This grant of easement shall run with both the Grantor's Real Estate and the Grantees' Real Estate and shall be binding on and shall inure to the benefit of the parties to this Agreement and their respective heirs, successors, or assigns and on all future owners of the Grantor's Real Estate and the Grantees' Real Estate.

15. It is agreed that this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa.

16. This Agreement constitutes the entire agreement between the parties and the prior understandings or representations of any kind preceding the date of this Agreement shall not be binding on either party, except to the extent incorporated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this ____ day of November, 2023.

"Grantees"

_____ _____

David K. Reed Lisa R. Parmley

State of Iowa, County of Pottawattamie; ss.

This record was acknowledged before me this_____ day of November, 2023, by David K. Reed, a single person and Lisa R. Parmley, a single person.

_____
Notary Public in and for the State of Iowa

CITY OF COUNCIL BLUFFS, IOWA,

I, JODY QUACKENBUS, Clerk of the City of Council Bluffs, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of Council Bluffs by Resolution and Roll Call No. _____, passed on the _____ day of November, 2023 and this certificate is made pursuant to authority contained in said Resolution.

_____
City Clerk of the City of Council Bluffs, Iowa

CITY OF COUNCIL BLUFFS, IOWA,
a municipal corporation

By:_____
Printed Name: Matthew J. Walsh
Title: Mayor

STATE OF IOWA, COUNTY OF POTTAWATTAMIE , ss:

On this _____ day of November, 2023, before me, the undersigned, a Notary Public in and for said County and State personally appeared Matthew J. Walsh to me personally known, who being by me duly sworn, did say that he is the Mayor of the City of Council Bluffs, a municipal corporation under the laws of the State of Iowa, executing the within and foregoing instrument and acknowledged that he executed the same as his voluntary act and deed of the City of Council Bluffs, by it and by him voluntarily executed.

_____
Notary Public in and for the State of Iowa

EXHIBIT “A”

Lot 106 in the Original Plat of Council Bluffs, Iowa and all that part of Lot 107, in the Original Plat of Council Bluffs, Iowa, described as follows: Commencing on the Southerly line of South First Street, in Council Bluffs, Iowa, where the line between Original Plat Lots 106 and 107 intersect with the Southerly line of South First Street, said point being marked with an iron pin, thence on a line running South 54° 45’ West to the Southerly line of Original Plat Lot 107, thence South 35° 30’ East 11 feet to the Southwesterly corner of Original Plat Lot 107, thence North 53° 30’ East 462 feet along the Easterly line of Original Plat Lot 107 to Point of Beginning.