

Recorded: 2/17/2022 at 12:05:04.0 PM
County Recording Fee: \$32.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$35.00
Revenue Tax:
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2022 PG: 545

Prepared by/Return to: Elizabeth L. Souer, Shuttleworth & Ingersoll, P.L.C., P.O. Box 2107, Cedar Rapids, Iowa 52406-2107; Phone: (319) 365-9461

EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is made effective as of February 16, 2022, by and between **Jim Harbach Investments, LLC**, an Iowa limited liability company ("Harbach") and **Michael F. Loecke**, as Trustee of the **Michael F. Loecke Revocable Trust Dated May 2, 2014** and **Megan A. Loecke**, as Trustee of the **Megan A. Loecke Revocable Trust Dated May 2, 2014** (collectively, "Loecke").

Recitals:

A. Loecke owns certain real estate located in Delaware County, Iowa, legally described as:

Parcel N, being part of Parcel I and part of the SW1/4 NE1/4; and Parcel J, part of the SE1/4 NE1/4, all in Sec. 31, T89N, R5W of the Fifth P.M., City of Manchester, Delaware County, Iowa, according to plat recorded in Book 2003, Page 1786.

(such real estate, the "Loecke Property").

B. Harbach owns certain real estate located at 1222 W Marion St., Manchester, Delaware County, Iowa legally described as:

Parcel M, including Parcel H and Part of Parcel I all in Sec. 31, T89N, R5W of the Fifth P.M., City of Manchester, Delaware County, Iowa, according to plat recorded in Book 2003, Page 1786 of the records of the Delaware County, Iowa, Recorder.

which is adjacent to the Loecke Property (such real estate, the "Harbach Property").

C. Harbach accesses the Harbach real estate through the Loecke Property, and the parties wish to memorialize the access easement through the Loecke Property for the benefit of the Harbach Property, as depicted on Exhibit A (such property, the "Easement Area").

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged by the parties, it is agreed:

1. **Recitals.** The Recitals are incorporated herein as if fully set forth.

2. **Easement.** There is hereby established an easement over and across the Easement Area for the use and benefit of Harbach and the Harbach's successors, heirs, assigns, and invitees for ingress/egress purposes including but not limited to pedestrian, vehicular, or other motorized access. Loecke shall not act or permit any act or acts, or construct any fence or other barrier, which would unreasonably prevent or obstruct the free and uninterrupted passage over the Easement Area; provided however, that installation, maintenance and repair of utilities, or maintenance and repair of the surface of the Easement Area that impede access on a temporary basis while work is being completed shall be permitted.

3. **Maintenance.**

A. **Surface Maintenance, Repair, and Replacement.** Maintenance shall include maintaining the surface of the Easement Area. All decisions regarding the need for surface maintenance, repair and replacement of the Easement Area and the type of surfacing material used shall be made by Harbach and the cost of such shall be borne by Harbach, unless and until the titleholder of the Loecke Property decides to construct a paved road across any portion of the Easement Area ("**Paved Road Portion**"), in which case such titleholder shall make all decisions as to the construction materials used for the Paved Road Portion and the parties shall split the cost of the Paved Road Portion evenly, except that Harbach's total contribution to the Paved Road Portion shall be no more than ten thousand dollars (\$10,000.00).

B. **Vegetation.** Harbach shall be responsible for maintaining all vegetation in and around the Easement Area unless and until a Paved Road Portion is installed, at which time Loecke shall be responsible for vegetation in and around the Paved Road Portion.

C. **Snow Removal.** Harbach shall be responsible for all snow removal from the Easement Area unless and until a Paved Road Portion is installed, at which time Loecke shall be responsible for snow removal from the Paved Road Portion.

4. **Damage.** In the event that any party to this Agreement, or their successors, assigns, or invitees, cause damage to the Easement Area, they shall be responsible for repairing such damage.

5. **Taxes.** Each owner shall be solely responsible for all real estate taxes and

assessments relating to their respective properties.

6. **Indemnity.** The parties shall be solely responsible for any accident, action, claim, death, demand, injury, loss or other liability, of any kind or nature, suffered, incurred or threatened, by such party(s) or any employee, agent, contractor, invitee or other person on or about the Easement Area at the request, permission or invitation of such party(s), express or implied. Each of the parties shall indemnify and hold the other harmless from any and all such liability, threatened or incurred.

7. **Expiration of Easement.** The easement granted under this Agreement shall run with the land in perpetuity, and shall be binding upon and shall inure to the benefit of the owners of the Loecke Property and the Harbach Property, and their respective successors, assigns, lessees, invitees, agents, and contractors. This easement shall terminate as to any portion of the easement area that is transferred to Harbach by subsequent transactions. If such owners or their successors in interest violate or attempt to violate any of the covenants and/or obligations herein contained or shall fail to perform and discharge any of the burdens and obligations herein imposed, any or all of the other owners may commence any proceeding at law or in equity against the party or parties in violation or attempting to violate said covenants or failing to discharge any burden or obligation provided for herein, either to enjoin such violation or attempted violation or to recover damages therefor. Said parties may alternatively, concurrently or successfully use their contractual and/or legal rights, privileges and powers by virtue of this grant of easements or by virtue of law, or both, without any waiver, election or estoppel operating to prevent the pursuit of any other remedy, temporarily abandoned or otherwise.

8. **Successors and Assigns.** This Agreement shall be binding upon the undersigned and their respective heirs, administrators, executors, successors and assigns who later acquire equity or legal interests in the Loecke Property and the Harbach Property.

9. **Entire Agreement.** This Agreement supersedes any and all earlier agreements or representations, written or oral, between the parties regarding the easement granted herein. Any change or amendment to this Agreement shall be effective only if it is in writing and signed by the owners of the Loecke Property and the Harbach Property and/or their respective heirs, successors, and assigns. Invalidity of any one of the covenants or provisions of this Agreement and grant of easements shall not in any way affect any other provisions hereof, which shall remain in full force and effect. This Agreement and grant of easement shall be governed by the laws of the State of Iowa. Words and phrases herein, including the acknowledgement hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neutral gender, according to context.

10. **Notices.** All notices under this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, and addressed to the owners of the Loecke Property and the Harbach Property, and their respective successors at their last known addresses.

11. Non-Waiver. No delay or failure by either party to exercise any right under this Agreement shall constitute a waiver of that or any other right unless otherwise expressly provided in this Agreement.

12. Headings. Headings of this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

[Signature page follows.]

STATE OF Iowa)
)SS
COUNTY OF Delaware)

This instrument was acknowledged before me on February 16, 2022, by **Jim Harbarch Investments, LLC**, an Iowa limited liability company

[Signature]
Notary Public, State of Iowa

Jim Harbarch Investments, LLC

[Signature]
Jim Harbarch, as President



STATE OF Iowa)
)SS
COUNTY OF Delaware)

This instrument was acknowledged before me on February 16, 2022, by **Michael F. Loecke, as Trustee of the Michael F. Loecke Trust Dated May 2, 2014.**

[Signature]
Notary Public, State of Iowa

Michael F. Loecke Revocable Trust Dated May 2, 2014

[Signature]
Michael F. Loecke, as Trustee



STATE OF Iowa)
)SS
COUNTY OF Delaware)

This instrument was acknowledged before me on February 16, 2022, by **Megan A. Loecke, as Trustee of the Megan A. Loecke Trust Dated May 2, 2014.**

[Signature]
Notary Public, State of Iowa

Megan A. Loecke Revocable Trust Dated May 2, 2014

[Signature]
Megan A. Loecke, as Trustee



Exhibit A

