



Book 2025 Page 2807

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Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

Return to: Ashley & Patrick Freiburger, Jr., 717 E. Howard St., Manchester, IA 52057
Preparer: Mark A. Roeder, 119 E. Main St., Manchester, IA 52057

FENCING AGREEMENT

I. PREAMBLE

This Fencing Agreement ("Agreement") is entered into by and between Patrick J. Freiburger, Jr. and Ashley L. Freiburger, husband and wife, (the Freiburgers), residing at 717 E. Howard St., Manchester, Iowa 52057, and Kenneth J. Davidshofer and Renee R. Davidshofer, husband and wife (the Davidshofers), residing at 2465 185th St., Earlville, Iowa 52041-8647, Gabrielle Wessells, Clerk of the Oneida Township Trustees, and the Oneida Township Board of Trustees, acting as fence viewers (collectively, the "Parties"). The Freiburgers and the Davidshofers are adjoining landowners in Oneida Township, Delaware County, Iowa. The parties desire to formalize their mutual understanding regarding the construction, maintenance, and cost-sharing of a fence, in part along the boundary between their properties, and in part where the fence is to be installed in the most feasible location on property of the Freiburgers.

II. RECITALS

1. The Freiburgers are record owners of:

Parcel 2023-74 Part of the abandoned railroad right of way lying across the Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) of Section Sixteen (16), Township Eighty-Nine North (T89N), Range Four West (R4W) of the Fifth Principal Meridian, Delaware County, Iowa according to plat recorded in Book 2023, Page 2033 in the records of the Delaware County Recorder.

And

Parcel 2023-75 Part Of The Southeast Quarter (SE 1/4) Of The Northeast Quarter (NE 1/4) Of Section Sixteen (16). Township Eighty-Nine (89) North, Range Four West (R4W) Of The Fifth Principal Meridian, Delaware County, Iowa, according to plat recorded in Book 2023, Page 3033.

2. The Davidshofers are record owners of:

Abandoned Railroad R.O.W. lying across the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 16, Township 89, Range 4 (approximately 9.09 acres), in Delaware County, Iowa

3. The Davidshofers filed a Petition in Equity seeking judicial review of a Fence Dispute Decision dated May 28, 2025 by the Oneida Township Trustees.

III. OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties agree as follows:

a. Gabrielle Wessells, Clerk of the Oneida Township Trustees, and the Oneida Township Board of Trustees, acting as fence viewers, agree to vacate the Fence Dispute Decision dated May 28, 2025, and to reimburse the Freiburgers the \$420 in costs advanced by the Freiburgers for convening the special meeting. Davidshofers will not be billed nor have assessed by Oneida Township any of the administrative costs associated with or charged by the Township Fence Viewers.

b. The Freiburgers, and the Davidshofers, agree to install a fence in accord with the agreement set forth in attached Exhibit "A", constructed with braced wood corner posts and a repeating pattern of three steel line posts followed by one wood post. The fence shall be built using 47-inch woven mesh wire, with a strand of barbed wire installed along the top and another strand of barbed wire along the bottom for added security and durability.

c. The Davidshofers agree to erect and maintain the east half of the whole north adjoining fence line, about 690 feet. Davidshofers will place their portion of the fence on a flagged survey line by Bill Burger.

d. The Freiburgers agree to erect and maintain the west half of the whole north adjoining fence line about 690 feet. The Freiburgers will erect a portion of such fence inside their property line in the area where the creek passes alongside or near the property

boundary line in places where it is not feasible to build a permanent fence along the property line.

e. On the portion of the fence that the Freiburgers erect inside their property line, they are permitted to construct gate of sufficient height and width to allow livestock, such as cattle, sheep, horses and goats to pass, and to detain such livestock when the gate is closed.

f. From time-to-time, the Freiburgers may erect an electric fence along or near the boundary line between the two properties in the area where a tight permanent fence is not feasible to construct. Freiburgers will not enter the property of Davidshofers for purpose of installing an electric fence.

g. The Davidshofers agree to erect and maintain the south half of the whole west, adjoining fence line about 360 feet. The Davidshofers will erect such fence on a line flagged by Bill Burger and that offsets onto the Freiburgers' land until the halfway point to meet with Patrick's erected fence. This fence will run roughly north-south in the area depicted on the not-to-scale rough drawing set forth in Exhibit "A."

h. The Freiburgers agree to erect and maintain the north half of the fence running north-south approximately three hundred and sixty feet. The Freiburgers will erect the fence where it crosses over the creek.

i. **Maintenance and Repair:** The parties agree to maintain and repair in good and functional condition at their own expense that portion of the fence they are responsible for erecting under this Agreement in a good and tight manner and so the fencing is securely fastened to good and substantial posts set firmly in the ground.

j. **Timing:** All parties agree to erect their tight fencing by the end of April 2026.

k. **Liquidated Damages:** The Parties agree that time is of the essence in completing the fence described herein. If the fence is not fully constructed in accordance with this Agreement by April 30, 2026, the non-defaulting Party shall be entitled to liquidated damages in the amount of **Fifty Dollars (\$50.00)** per calendar day beyond that date until construction is completed. The Parties acknowledge that actual damages resulting from delay would be difficult to ascertain and that this amount represents a reasonable estimate of such damages, not a penalty.

l. Entry Upon Land: The Freiburgers and Davidshofers, and those persons constructing and maintaining fencing for them, may go upon each other's land without prior notice to the limited extent and purpose needed to:

- i. Inspect the area to be fenced,
- ii. Erect the fencing under this Agreement,
- iii. Inspect the fencing constructed pursuant to this Agreement for repairs and maintenance, and to
- iv. Maintain the fencing constructed pursuant to this Agreement.

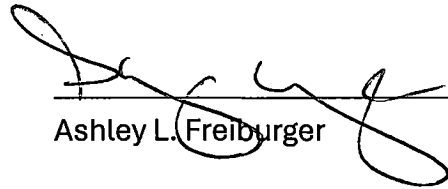
m. Dismissal of Lawsuit: The Davidshofers shall dismiss with prejudice, at their own cost, the Petition in Equity filed in the case titled, *Davidshofer v. Oneida Township Board of Trustees, et. al.*, Delaware County Case No. 01281 EQCV009363.

n. Dispute Resolution. If a dispute arises between the Parties regarding the interpretation, construction, maintenance, or cost-sharing of the fence described herein, the Parties shall first attempt to resolve the matter through good-faith negotiation. If the dispute cannot be resolved through direct negotiation within thirty (30) days, the Parties agree to submit the matter to non-binding mediation, conducted by a mutually agreed-upon mediator located in Delaware County, Iowa. Each Party shall bear its own costs associated with mediation. If mediation fails to resolve the dispute, either Party may pursue relief through the appropriate Iowa court of jurisdiction.

o. Entire Agreement. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter herein and supersedes all prior and contemporaneous agreements, representations, negotiations, and understandings, whether oral or written. No amendment or modification of this Agreement shall be valid unless made in writing and signed by both Parties.

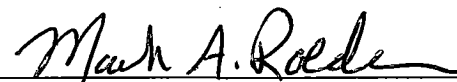
p. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, beneficiaries, successors, and assigns. The obligations and rights under this Agreement shall run with the land and be enforceable against subsequent owners of the parcels described herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the last signature, below, intending to be legally bound.

 10-10-25
Ashley L. Freiburger

STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)

On this 10th day of October 2025, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Ashley L. Freiburger, to me known to be the persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

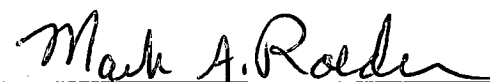

Notary Public in and for the State of Iowa

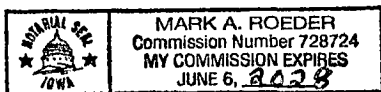


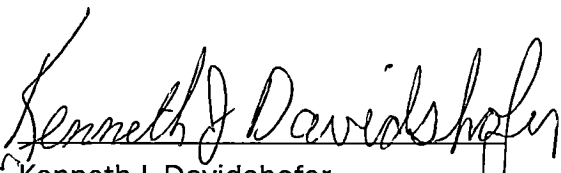
 Jr. 10-9-25
Patrick J. Freiburger, Jr.

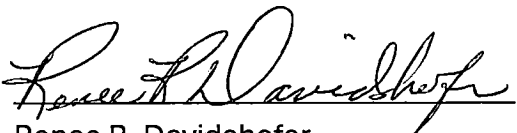
STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)

On this 9th day of October 2025, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Ashley L. Freiburger, to me known to be the persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

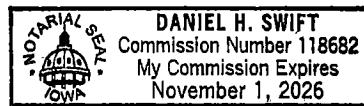

Notary Public in and for the State of Iowa



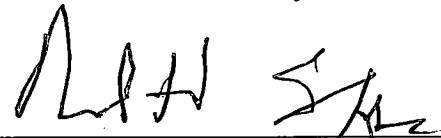

X Kenneth J. Davidshofer


X Renee R. Davidshofer

STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)



On this 10 day of October 2025, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Kenneth J. Davidshofer, and Renee R. Davidshofer, to me known to be the persons named 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

Gabrielle Wessels

Gabrielle Wessels
Oneida Township Clerk

B. Krogmann

Brian Krogmann
Oneida Township Trustee

Rick Mormann

Rick Mormann
Oneida Township Trustee

Nathan Wessels

Nathan Wessels
Oneida Township Trustee

STATE OF IOWA)
) ss:
COUNTY OF DELAWARE)

On this 21st day of October 2025, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Gabrielle Wessels in her capacity as Oneida Township Clerk, Brian Krogmann in his capacity as Oneida Township Trustee, Rick Mormann in his capacity as Oneida Township Trustee, and Nathan Wessels in his capacity as Oneida Township Trustee, to me known to be the persons named in and who executed the foregoing instrument, and each acknowledged that they executed the same as his or her voluntary act and deed.

Elaine Hermesen

Notary Public in and for the State of Iowa



