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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

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Prepared by & Return to: Marcus F. Abels, 400 Locust Street, Suite 400, Des Moines, IA 50309; PH: (515) 288-5000
✓ Randy Miller 1237 Eagle Cr. Blvd. Altoona, Ia 50009

IMPOUNDMENT AND OVERLAND FLOWAGE EASEMENT AGREEMENT

This Easement Agreement ("Agreement") dated as of July 21st, 2017, by and between **JACOB RIED AND JENNIFER RIED, husband and wife** (collectively "Ried") and **RANDALL D. MILLER AND MARILYN J. MILLER, husband and wife** (collectively "Miller").

BACKGROUND

Ried is the owner of the real property described as:

Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section Twenty-two (22), in Township Seventy-seven (77) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa (Parcel "1");

and Miller is the owner of the real property described as:

South One-half (S1/2) of the Southwest Quarter of Section Fifteen (15), in Township Seventy-seven (77) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa. (Parcel "2").

Ried and Miller desire to grant each other certain rights and easement with respect to Parcel 1 and Parcel 2, as more particularly described below, and subject to the terms and conditions of this Agreement.

AGREEMENTS

For and in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easement on Parcel 1. Ried, for themselves and their heirs, personal representatives, successors and assigns, hereby grant and convey unto Miller, their heirs, personal representatives, successors and assigns a perpetual, non-exclusive easement in and to that portion of the Parcel 1 legally described on the Impoundment Easement dated May 17, 2017 and filed May 22 in Book 2017 at Page 1582 in the records of the Madison County Recorder ("Parcel 1 Easement Area"). Miller will have reasonable rights of ingress and egress to the Parcel 1 Easement Area for purposes of construction of the impoundment and maintenance thereof at a location or locations to be designated by Ried from time to time.

2. Additional Consideration. As material consideration for Ried's willingness to enter into this Agreement, Miller covenants and agrees as follows:

(a) Construction and Maintenance of Parcel 1 Easement Area. Miller will prepare the Parcel 1 Easement Area by removing all trees, debris and other materials incompatible with the project in the normal pool area and ten (10) feet above the normal pool area. Miller will install rip-rap five (5) feet above the normal pool level on the South side of the impoundment area for erosion control purposes. After the initial construction of the impoundment area, Miller will, at Miller's expense, maintain the Parcel 1 Easement Area in good condition, repair and appearance. Also, Miller will complete construction of the fence along the boundary between Parcel 1 and Parcel 2 using like materials and design to the existing fence. All work associated with the fencing, initial clearing and ongoing maintenance shall be performed to the reasonable satisfaction of Ried.

(b) Recreational use of pond on Parcel 2. Miller grants Ried a perpetual, non-exclusive easement to use the pond to be constructed on Parcel 2 for recreational purposes (e.g., boating, fishing and swimming), together with reasonable rights of ingress and egress for such uses at a location or locations to be designated by Miller from time to time.

(c) Overland Flowage Easement. Miller grants to Ried the right to continue the flowage of water from Parcel 1 into the watercourse on Parcel 2, which includes the pond and dam being constructed on Parcel 2 contemporaneously with the Agreement. Miller acknowledges and agrees that adding three (3) additional single family homes on Parcel 1 may incrementally increase the water flowage through Parcel 2 and waives any claim or objection to any such incremental increase. Miller at Miller's expense agrees to maintain the pond, associated dam and appurtenances thereto on Parcel 2 in compliance with all applicable laws and regulations and in accordance with the design and plans prepared by J. Brian Morrissey, P.E and P.L.S., and approved by the Iowa Department of Natural Resources as Permit Number FP2017-75. Any material deviations from said design or plans, or any application to amend or replace said IDNR permit, shall be subject to the advance written approval of Ried, which shall not be unreasonably withheld, conditioned or delayed.

(d) Zoning and Development of Parcel 1. Miller will not object, and will support in writing if requested, Ried's rezoning and/or subdivision of Parcel 1 into up to four (4) parcels for construction and occupancy of up to four (4) single family dwellings, including such outbuildings and accessory uses as may be permitted under applicable zoning regulations. The terms of this Agreement are in no way intended, nor should this Agreement be construed, to in any way limit the use or development of Parcel 1. This Agreement is intended to allow, as one possible future use,

development of Parcel 1 into up to four (4) single family building sites without limitation as to any other lawful use or development.

(e) Payment. Miller will pay \$1,000 to Ried upon execution of this Agreement to reimburse associated legal expenses.

3. Private Easement. Nothing in this Agreement shall be deemed to be a dedication of any area for public use. All rights, easements and interests herein created are private and do not constitute a grant for public use or benefit.

4. Successors Bound. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming under them.

5. Duration. The duration of the easements granted herein shall be perpetual.

6. Miscellaneous. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

7. Captions and Headings. The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of or the scope or intent of this Agreement.

8. Cumulative Remedies. Each and every one of the rights, benefits and remedies provided herein, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity.

9. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be.

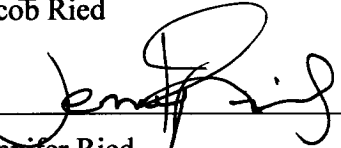
10. Attorney's Fees. If there is any legal action or proceeding, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and as a part of such judgment.

11. Entire Understanding and Amendment. This Agreement constitutes the entire understanding between the parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressed herein. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement and signed by each of the parties hereto.

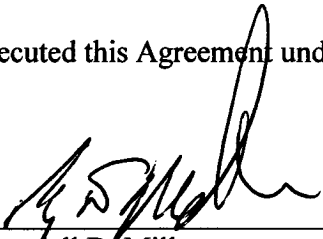
IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year set forth below.



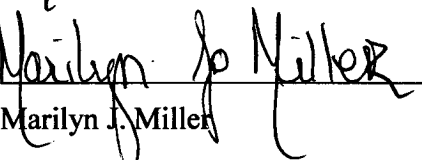
Jacob Ried



Jennifer Ried



Randall D. Miller

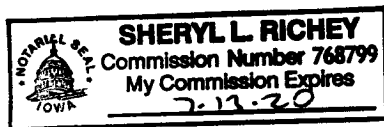


Marilyn J. Miller

STATE OF IOWA)
 ss.

COUNTY OF Madison)

This instrument was acknowledged before me on July 31, 2017, by Jacob Ried and Jennifer Ried, husband and wife.



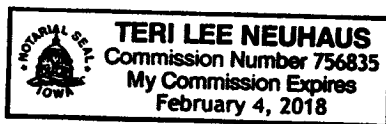


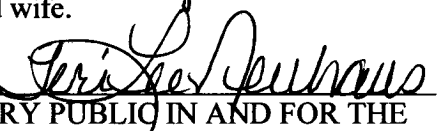
NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA

STATE OF IOWA)

 ss. ,
COUNTY OF Pawnee)

This instrument was acknowledged before me on July 21st, 2017, by Randall D. Miller and Marilyn J. Miller, husband and wife.





NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA