



2021-17434

05/05/2021 12:59:41 PM

Recording fees paid:

\$64.00

Deb Houghtaling

Pages: 10

COUNTY CLERK/REGISTER OF DEEDS

By: PM

Submitter: FIRST AMERICAN TITLE INSURANC

S-File



AGR

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (“Agreement”) is made and entered into this the 30th day of March 2021, by and between Menard, Inc., a Wisconsin corporation (“**Menard**”) and Dowd Grain Company, Inc., a Nebraska corporation (“**Dowd**”); collectively the “**Parties**”.

RECITALS

WHEREAS, Menard is the owner of a certain parcel of land located in the City of Papillion, County of Sarpy, State of Nebraska, and legally described in **Exhibit A** (the “**Menard Property**”);

WHEREAS, Dowd is the owner of that certain parcel of land located in the City of Papillion, County of Sarpy, State of Nebraska, and legally described in **Exhibit B** (the “**Dowd Property**”). Together, the Menard Property and the Dowd Property shall comprise the “**Shopping Center**”;

WHEREAS, it is the desire of the Parties to establish for the benefit of the owners of the Menard Property and the Dowd Property, their successors and assigns, an access easement over parts of their respective properties.

NOW, THEREFORE, the Parties, for and in consideration of their respective undertakings hereby covenant and agree as follows:

ARTICLE ONE EASEMENT

1.01 Recitals. The Parties hereby affirm the above Recitals as true, and are hereby incorporated into this Agreement by reference.

1.02 Grant of Access Easement. Subject to all matters of record and the terms set forth in this Agreement, Menard hereby grants to Dowd a non-exclusive, perpetual access easement (the “**Access Easement**”) over those portions of the Menard Property as shown on **Exhibit C** for ingress and egress of vehicular and pedestrian traffic.

1.03 Use of the Access Easement. The Parties may make use of the easement for vehicular access to the publicly dedicated rights of way.

1.04 Relocation of Easement. Menard reserves the right to relocate the portions of the Access Easement, provided that: (a) Menard shall assume all costs for the creation and recording of a new exhibit for the relocated Access Easement; (b) Menard provides proper notice; and (c) the relocated portions of the Access Easement maintains the owner of the Dowd Property's access to Crest Road.

1.04.01 As used in section 1.04 above, "proper notice" shall mean providing notice per the notice requirements of section 4.09 below. Furthermore "proper notice" requires that the Grantor provide a marked up site plan, diagram or similar depiction of the change(s) to be made to the Access Easement within said notice.

1.04.02 As used in section 1.04 above, "all costs" shall include but is not limited to all surveyor and/or civil engineer costs, recording fees, permits, traffic signs, line striping, landscaping, demolition and/or construction of improvements needed to relocate the Access Easement and/or Access Drive, any restoration of the properties following any work being done, relocation of utilities, etc. However "all costs" shall not include costs for the other party or parties to review or object to any proposed changes to the Access Easement.

ARTICLE TWO MAINTENANCE OF ACCESS DRIVE

2.01 Maintenance. From and after the date of the completion of the initial construction of the Access Drive, Menard shall be responsible for maintaining the Access Drive that in good order, condition and repair. Maintenance will be done in accordance with the practices prevailing in the operation of similar first-class retail centers in the Papillion, Nebraska area, including but not limited to the prompt removal and/or prevention of the accumulation of snow, ice, and other debris and maintenance of the paved surface, curbs, and gutters in compliance with all applicable city ordinances. Maintenance shall also include any storm water facilities that function to drain the storm water from the Access Drive.

2.02 Maintenance Costs. In exchange for Menard's agreement to maintain the Access Drive as provided herein, Dowd agrees to pay Menard a maintenance fee (the "**Maintenance Fee**"), by January 15 of each year to cover the costs for the calendar year in which the Maintenance Fee is paid. The obligation to pay the Maintenance Fee shall be a covenant that runs with the Dowd Property. The first Maintenance Fee shall be due at such time the owner of the Dowd Property connects to the Access Drive. The first Maintenance Fee shall be Two Thousand and 00/100 Dollars (\$2,000.00), and shall be prorated for the first year in which the owner of the Dowd Property connects to the Access Drive. The Maintenance Fee shall be increased by three percent (3%) every year thereafter. Payment shall be made to the order of Menard, Inc. and mailed to Menard, Inc., Attention Properties, 5101 Menard Drive, Eau Claire, WI 54703. Failure to provide payment to Menard within ten (10) days after receipt of written notice from Menard of Dowd's failure to pay shall be deemed a material breach of this Agreement.

**ARTICLE THREE
INSURANCE**

3.01. Insurance. At all times the Parties shall maintain in full force and effect and require its contractor(s) to obtain and thereafter maintain at least the minimum insurance coverage set forth below:

3.01.01. Workers' compensation and employer's liability insurance:

- i. Worker's compensation insurance as required by all applicable Laws; and,
- ii. Employer's liability insurance in the amount of \$250,000 each accident for bodily injury, \$500,000 policy limit for bodily injury by disease and \$250,000 for each employee for bodily injury by disease.

3.01.02. Commercial general liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability:

- i. \$1,000,000 each occurrence (for bodily injury and property damage);
- ii. \$1,000,000 for Personal Injury Liability;
- iii. \$2,000,000 aggregate for Products and Completed Operations (which shall be maintained for a two (2) year period following final completion of the work); and
- iv. \$2,000,000 general aggregate applying separately to this project.

3.01.03. Automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles with limits of liability which shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined.

3.02. Right to Self-insure. A Party may choose a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and shall upon request deliver to such other Parties each calendar year a copy of its annual report or Form 10-K that is audited by an independent certified public accountant which discloses that such Party has One Hundred Million Dollars (\$100,000,000) or more of net current assets. Notwithstanding the foregoing, Menard reserves the right to self-insure without providing proof of net current assets.

**ARTICLE FOUR
MISCELLANEOUS**

4.01 Covenants Running with the Land. All of the provisions of this Agreement are intended to be, and shall be construed as, covenants running with the land and shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective lessees, transferees, successors and assigns.

4.02 No Dedication. Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of the Menard Property to the general public.

4.03 No Joint Venture. Nothing contained in this Agreement shall be construed to make the Parties hereto, or their successors and assigns, partners or joining ventures or to render any of said parties liable for the debts or obligations of the other, except as in this Agreement expressly provided.

4.04 Waiver. No delay or omission by any of the Parties, or their successors and assigns, to exercise any right or power accruing upon any non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the Parties, or their successors or assigns, of any of the covenants, conditions or agreements hereof to be performed by any other party hereto shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement contained herein.

4.05 Headings. The section and any subsection headings herein are for convenience and reference only and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

4.06 Severability. If any provisions or portions thereof of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision, or portion thereof, to any other persons or circumstances shall be valid and enforceable to the fullest extent permitted by law.

4.07 Amendments to be in Writing. No amendment shall be effective to add to, change, modify, waive or discharge this Agreement, in whole or in part, unless such amendment is in writing and signed by the party to be bound.

4.08 Indemnification. Dowd hereby covenants and agrees to defend, indemnify and hold Menard harmless, including Menard's members, officers, employees, agents, representatives, tenants, successors and assigns, (the "**Indemnified Parties**"), from and against any and all claims, suits, actions, loss, cost, expense (including reasonable attorney's fees), liability or claim of liability that arises out of the following: (i) any default by Dowd under this Agreement; (ii) which occur as a result of the exercise by Dowd of its rights and/or performance of any of Dowd's obligations hereunder; or (iii) the negligence or willful misconduct of Dowd and/or the employees, agents, contractors, licensees and invitees of Dowd in, on or about the Menard Property. Dowd's indemnification obligation under this section shall not apply in the event of gross negligence by one or more Indemnified Parties.

4.09 Notices. Any notice shall be in writing and sent by electronic delivery, US Mail, certified mail, return receipt requested, or by a national overnight courier providing evidence of delivery for next business day delivery (such as FedEx or UPS) to the following addresses:

If to Menard:

Menard, Inc.
Attn: Properties Division
5101 Menard Drive
Eau Claire, WI 54703
Phone: (715) 876-2532
Email: properties@menard-inc.com

If to Dowd:

Dowd Grain Company, Inc.
Attn: Duane J. Dowd
220 N 89th Street, Suite 201
Omaha, NE 68114
Phone: (402) 391-5033
Email: joedowd13@gmail.com

4.10 No Conflicting Agreements. Each party represents and warrants that, as of the date of this agreement, it has full authority to enter into this Agreement, and that this Agreement does not violate any other contract or commitment of such party to any other entity.

4.11 Authority. Each person executing this Agreement represents and warrants that he or she is fully authorized to execute and deliver this Agreement as a binding obligation of the party for whom he or she is executing this Agreement

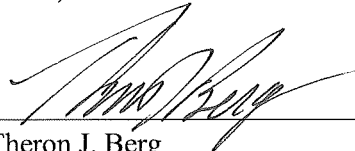
[Signatures on Following Pages]

ACCESS EASEMENT AGREEMENT

[Signature Page 1 of 2]

In witness whereof, the undersigned has caused this Access Easement Agreement to be executed as of the date set forth above.

MENARD, INC.

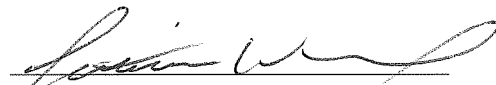
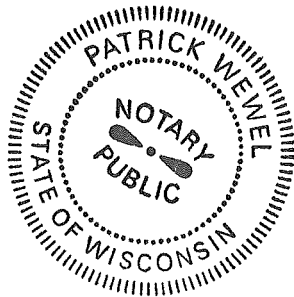


By: Theron J. Berg

Its: Real Estate Manager

State of WISCONSIN)
)ss.
County of EAU CLAIRE)

On this the 18th day of March, 2021, before me a Notary Public within and for said County and State, personally appeared Theron J. Berg to me personally known, who, being by me duly sworn, did say that he is the Real Estate Manager of Menard, Inc., the corporation named in the foregoing instrument, and that the instrument was signed on behalf of the corporation by authority of its Board of Directors and Theron J. Berg acknowledged the instrument to be the free act and deed of the corporation.



Notary Public
Eau Claire County, Wisconsin
My Commission is permanent.

ACCESS EASEMENT AGREEMENT

[Signature Page 2 of 2]

DOWD GRAIN COMPANY, INC.

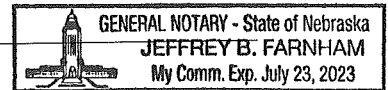
By: [Signature]
Name: Duane J. Dowd
Title: Pres.

STATE OF _____)
) ss.
COUNTY OF _____)

On this 23rd day of March, 2021, before me a Notary Public in and for the County and State aforesaid, personally appeared Duane J. Dowd, President of Dowd Grain Company, Inc., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, and who acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

[Signature]
Notary Public Dewey County,
NE

My Commission:



THIS INSTRUMENT DRAFTED BY AND WHEN RECORDED RETURN TO:
Nick Brenner, Corporate Counsel
Menard, Inc. – Properties Division
5101 Menard Drive, Eau Claire, WI 54703

EXHIBIT A

Menard Property

Lot 1, 370 North Replat Four, a subdivision in Sarpy County, Nebraska, being a replatting of Lot 1, 370 North Replat Two and Outlot "E", 370 North, Subdivisions in Sarpy County, Nebraska

EXHIBIT B

Dowd Property

Lot 7, 370 North, Replat Two, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska, being a replatting of Lot 15, 370 North, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska

EXHIBIT C

Access Easement

