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Dallas County Iowa  
Chad C. Airhart RECORDER  
File#

BK 2017 PG 23201

## OVERLAND FLOWAGE EASEMENT

**Preparer Information:**

Lisa R. Wilson  
Wilson, Guerrero & Egge, P.C.  
475 Alice's Road, Suite A  
Waukee, Iowa 50263

*Bill and*

Return Document To:  
City of Waukee, Iowa  
City Hall  
230 W. Hickman Road  
Waukee, Iowa 50263

**Grantor:**

117 Land Company, L.L.C.

**Grantee:**

City of Waukee, Iowa

**Legal Description:**

See Exhibit A.

## OVERLAND FLOWAGE EASEMENT

### **KNOW TO ALL PERSONS BY THESE PRESENTS:**

1. Grant of Easement(s).

The undersigned, **117 LAND COMPANY, L.L.C.**, an Iowa limited liability company (hereinafter referred to as the "Grantor"), in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, grant, and convey to the **CITY OF WAUKEE, IOWA**, a municipal corporation (hereinafter referred to as "the City"), a perpetual easement for an overland flowage and right-of-way area of a size and specifications as approved by the City over, under, through and across the following described real estate the real property legally described as:

### **SEE EXHIBIT "A" ATTACHED HERETO**

(hereinafter referred to as the "Easement Area")

2. Use and Purpose of Easement(s).

This Easement shall be granted for the purpose of locating and maintaining a surface water flowage area and which permits and allows the City to enter at any time upon and into said Easement as described herein, to patrol, police and maintain said Easement and to use as much of the surface and sub-surface thereof to construct, replace, locate, rebuild, enlarge, reconstruct, patrol, repair and to forever maintain said easement whenever necessary, in the City's sole discretion. No structure or building of any kind whatsoever shall be erected upon the said Easement without the express written consent of the City.

3. Maintenance.

The Grantor(s), their successors and assigns covenant and agree to keep and maintain the grading and elevations of said Easement(s), and any other repairs or maintenance that may be necessary, including but not limited to, necessary work to the drainage way, in accordance with engineering plan approved by the City.

The Grantor(s) further agree to keep and maintain the Easement(s) free and clear of bushes, brush, trees, trash, debris, weeds, undergrowth, objects, structures, fences, landscape elements, dirt fill, other obstructions, or affect grades in a manner which may interfere, obstruct or impede the flow of water in the Easement(s) areas in a manner acceptable to the City.

The Grantor(s) further agree the City shall not be responsible whatsoever for any maintenance or upkeep of the land located within the Easement Area, including but not limited to maintaining the grade and elevation thereof. Said responsibility to keep and maintain the Easement in good repair, maintenance and condition shall rest solely with the Grantor(s), at the Grantor(s)' expense. If the City deems it necessary to protect and preserve the Easement(s), the City may perform maintenance of the Easement Area after 30 days' notice to the owner of the property over which the easement is situated, and be reimbursed by the Grantors at the Grantors' sole expense.

The nature and purpose of this easement require for the free flow of water over and across the easement area and in the event that the City undertakes any work in the easement area the City shall not be required to replace landscaping, trees, shrubs, bushes, landscape elements, structures or underground water systems.

4. Right of Access.

The City shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described, including, but not limited to, the right to remove any unauthorized obstructions or structures placed or erected in the Easement Area.

5. Hold Harmless.

The Grantor agrees to indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and attorneys from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Grantor arising out of or in connection with any undertaking arising out of or otherwise related to this Easement.

6. Running of Benefits and Burdens.

The terms and conditions of this Easement are binding upon the Grantor including, but not limited to, future owners, developers, lessees or occupants. All provisions of this instrument including benefits and burdens, run with the land are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

7. Jurisdiction and Venue.

The City and the Grantor agree the District Court of the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement and said parties consent to the jurisdiction of the person being in Dallas County, Iowa.

8. Words and Phrases.

Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.

9. Parties.

The term "City" as used herein shall refer to the City of Waukee, Iowa, its elected officials, agents, employees, officers, and contractors. The term "Grantor" shall refer to 117 Land Company, L.L.C., an Iowa limited liability company, its heirs, assigns, successors-in-interest, or lessees, if any.

10. Attorney's Fees.

The City may enforce this instrument by appropriate action, and should they prevail in such litigation they shall recover as part of their costs the reasonable attorney's fees incurred in such litigation.

11. Integration.

This Agreement shall constitute the entire Agreement between the parties and no amendments or additions to this Agreement shall be binding unless in writing and signed by both parties.

12. Paragraph Headings.

The paragraph headings in this Agreement are included solely for convenience and shall not affect or be used in connection with, the interpretation of this Agreement.

Grantor does HEREBY COVENANT with the City that (i) Grantor holds said real estate described in this Easement Area by title in fee simple; (ii) that Grantor has good and lawful authority to convey the same; and (iii) said Grantor covenants to WARRANT AND DEFEND the said Easement Area against the claims of all persons whomsoever.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share, if any, in and to the interests conveyed by this Easement.

Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Signed this 14<sup>th</sup> day of November, 2017.

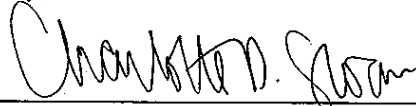
117 LAND COMPANY, L.L.C.

By 

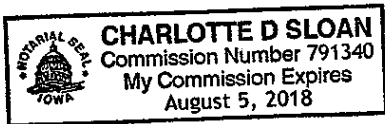
Toby T. Torstenson, Manager

STATE OF IOWA            )  
  ) SS  
COUNTY OF Dallas    )

This instrument was acknowledged before me on this 14<sup>th</sup> day of November, 2017, by Toby T. Torstenson, Manager of 117 Land Company, L.L.C.



Notary Public in and for the State of Iowa



ACCEPTANCE BY CITY OF WAUKEE, IOWA

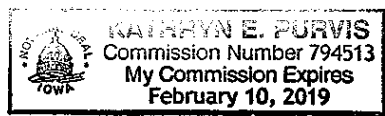
CITY OF WAUKEE, IOWA,  
an Iowa municipal corporation

By: [Signature]  
William F. Peard,  
Mayor of the City of Waukee, Iowa

By: [Signature]  
Rebecca D. Schuett  
City Clerk of the City of Waukee, Iowa

STATE OF IOWA            )  
                                  ) SS  
COUNTY OF DALLAS    )

On this 21 day of November, 2017, before me, the undersigned, a Notary Public in and for said County and the State of Iowa, personally appeared William F. Peard and Rebecca D. Schuett, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Waukee, Iowa, a municipal corporation, executing the within and foregoing instrument and acknowledged that they executed the same as their voluntary act and deed of the City of Waukee, by it and by them voluntarily executed.



By: [Signature]  
Printed Name: Kathryn Purvis  
Notary Public in and for the State of Iowa

EXHIBIT "A"

THE SOUTH 10.00 FEET OF LOT 1, I-80 INDUSTRIAL PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WAUKEE, DALLAS COUNTY, IOWA.

AND

THE SOUTH 15.00 FEET OF LOT 2, I-80 INDUSTRIAL PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WAUKEE, DALLAS COUNTY, IOWA.

AND

THE WEST 20.00 FEET OF LOT 5, I-80 INDUSTRIAL PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WAUKEE, DALLAS COUNTY, IOWA.

AND

A PART OF LOT 2, I-80 WEST INDUSTRIAL PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WAUKEE, DALLAS COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 2 AND A CURVE CONCAVE SOUTHERLY WHOSE RADIUS IS 465.00 FEET, WHOSE ARC LENGTH IS 55.51 FEET AND WHOSE CHORD BEARS SOUTH 71°01'12" EAST, 55.48 FEET; THENCE SOUTH 22°24'01" WEST, 72.25 FEET; THENCE SOUTH 00°02'49" WEST, 250.37 FEET; THENCE SOUTH 05°50'54" EAST, 83.93 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE NORTH 84°23'12" WEST ALONG SAID SOUTH LINE, 20.41 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE NORTH 05°50'54" WEST ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 129.59 FEET; THENCE NORTH 00°02'49" EAST ALONG SAID WEST LINE, 287.81 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.25 ACRES (10,894 SQUARE FEET).