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260 AT PAGE 674-688
COUNTY CLERK Charlotte L. Petersen
DEPUTY Karen Madsen

(Space Above This Line for Recording Data)

ROADWAY EASEMENT AND COVENANTS AGREEMENT

by and among

ROSELYN T. FLANAGAN,
WAYNE L. GOETZ AND MARY D. GOETZ,
JAMES D. THOMSON AND LEOTA M. THOMSON,
CALVIN B. GLIDDEN AND JOYCE M. GLIDDEN,
AND
GEORGE J. MEYER AND PHYLLIS J. MEYER

Dated as of September 19, 1996

674

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ROADWAY EASEMENT AND COVENANTS AGREEMENT

This Roadway Easement and Covenants Agreement (this "Agreement") is made and entered this 19th day of September, 1996, by and among Roselyn T. Flanagan (the "Grantor"), Wayne L. Goetz and Mary D. Goetz, husband and wife (collectively, "Goetz"), James D. Thomson and Leota M. Thomson, husband and wife (collectively, "Thomson"), Calvin B. Glidden and Joyce M. Glidden, husband and wife (collectively, "Glidden") and George J. Meyer and Phyllis J. Meyer, husband and wife (collectively, "Meyer").

Whereas, Grantor is the fee owner of the following described real property (the "Grantor's Property"):

Tax Lot 8 in Section 36, Township 17 North, Range 12, East of the 6th P.M.,
Washington County, Nebraska.

Whereas, Goetz is the fee owner of the following described real property (the "Goetz Property"):

The Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 36, Township 17 North,
Range 12, East of the 6th P.M., Washington County, Nebraska.

Whereas, Thomson is the fee owner of the following described real property (the "Thomson Property"):

The Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 36, Township 17 North,
Range 12, East of the 6th P.M., Washington County, Nebraska; and

Tax Lot 15 (1974), more particularly described as follows:

From the center of the Northeast $\frac{1}{4}$ of Section 36, Township 17 North, Range 12, East and assuming the $\frac{11}{44}$ line South of the North line South of the North line of said Section 36 to bear due East and West; then West along said $\frac{11}{44}$ line a distance of 378.8 feet; thence $S 0^{\circ} 19' 48'' W$ a distance of 230.0 feet; thence East a distance of 378.8 feet to the $\frac{11}{44}$ line West of the East line of said Section 36; then $N 0^{\circ} 19' 48'' E$ along said $\frac{11}{44}$ line a distance of 230.0 feet to the point of beginning, lying in the $SW\frac{1}{4}NE\frac{1}{4}$ of Section 36, Township 17 North, Range 12, East of the 6th P.M., Washington County, Nebraska, containing 2.0 acres, more or less.

Whereas, Glidden is the fee owner of the following described real property (the "Glidden Property"):

Lot 4, Thomson Timbers, a subdivision of part of the West Half of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$) in Section 36, Township 17 North, Range 12 East of the 6th P.M., Washington County, Nebraska.

Whereas, Meyer is the fee owner of the following described real property (the "Meyer Property"):

That part of the $SW\frac{1}{4}$ of the $NE\frac{1}{4}$ of Section 36, Township 17 North, Range 12 East of the 6th P.M., Washington County, Nebraska, further described as follows: Beginning at the SE corner of the $SW\frac{1}{4}$ of the $NE\frac{1}{4}$ of said Section 36; thence $S 89^{\circ} 57' 46'' W$ a distance of 676.53 feet; thence $N 90^{\circ} 00' 00'' E$ a distance of 203.03 feet; thence continuing along the previously described line a distance of 473.12 feet; thence $S 00^{\circ} 20' 11'' W$ a distance of 854.33 feet to the

point of beginning. Containing 13.27 acres more or less; also known as Tax Lot Fifty-one (51) and Tax Lot Twenty-three (23) in Section 36, Township 17 North, Range 12, East of the 6th P.M., Washington County, Nebraska.

Whereas, the Parties are adjoining land owners who have heretofore used a common roadway for ingress and egress to the public road which is known as County Road 240; and,

Whereas, the Parties desire to provide for sharing in the costs and expenses of maintaining such common roadway.

Now, therefore, in consideration of the foregoing and of the mutual promises and covenants contained herein, the Parties agree as follows:

ARTICLE I. DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01 Definitions.

Unless otherwise defined herein or the context otherwise requires, the terms defined in this Section 1.01 shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and the plural forms of any of the terms herein defined.

- (a) The term "Grantor" has the meaning set forth in the preamble hereto.
- (b) The term "Grantee" means the respective fee owner of the Goetz Property, Thomson Property, Glidden Property and Meyer Property.
- (c) The term "Roadway Easement" means the nonexclusive right and easement over a portion of the Grantor's Property for the purposes of access to and ingress and egress from each of the Grantee's Appurtenant Property by pedestrian and vehicular traffic to the public road known as County Road 240, as depicted in Exhibit "1" hereto and legally described therein.
- (d) The terms "Grantor's Property," "Goetz Property," "Thomson Property," "Glidden Property," and "Meyer Property" have their respective meaning set forth in the preamble hereto.
- (e) The term "Appurtenant Property" means the Grantor's Property, the Goetz Property, the Thomson Property, the Glidden Property, the Meyer Property or any other real property to which the Roadway Easement may from to time be appurtenant.
- (f) The term "Parties" means all of the fee owners of each and every Appurtenant Property, collectively. The term "Party" means the fee owner of any Appurtenant Property. If any Appurtenant Property is owned in joint tenancy, tenancy in common, tenancy by the entirety, or other concurrent tenancy, all joint or concurrent tenants of such Appurtenant Property shall be collectively considered a "Party" for purposes of this Agreement.
- (g) The term "Agent" shall have the meaning set forth at Section 4.03 hereto and any successor thereof.

Section 1.02 Rules of Construction.

The following rules of construction apply to the provisions of this Agreement unless the context otherwise requires.

(a) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

(b) The words "include," "including," and "includes" shall be deemed to be followed by the words "without limitation."

(c) Words such as "herein," "hereinafter," "hereof," "hereto," "hereby," and "hereunder," when used with reference to this Agreement refer to this Agreement as a whole.

(d) The article, section and subsection headings, if any, used herein are inserted for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(e) As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural, shall be deemed to include the others.

(f) The use of a verb in the present tense includes the future tense.

(g) The word "or" is not exclusive.

ARTICLE II. FILING OF RECORD

Upon execution, this Agreement shall become effective and be filed of record with the office of the Register of Deeds of Washington County, Nebraska.

ARTICLE III. EASEMENT**Section 3.01 Grant of Easement.**

Grantor hereby grants to each of the Grantees the Roadway Easement.

Section 3.02 Limitation of Use.

(a) The Roadway Easement does not include the right to park any vehicles upon the easement area. Such parking is prohibited. The Roadway Easement shall not be used for any purposes other than pedestrian or vehicular traffic; *provided, however*, that graders, dump trucks and other heavy equipment may be used from time to time to maintain, service and repair the Roadway Easement as contemplated herein.

(b) No Party shall use the Roadway Easement in a manner which materially interferes with its use by any of the other Parties.

(c) None of the Grantees may use the Roadway Easement in a manner which would materially increase the burden upon Grantor's Property created by this Agreement. The Grantor and the Grantees hereby consent and agree that for the lifetime of the Grantor, the Grantees may partition or subdivide any Appurtenant Property owned by any of the Grantees into two (2), but not more than two (2) lots, if it is intended that such partitioned or subdivided lots use the Roadway Easement for ingress and egress, and each lot intended to have a single family residence. In the event that any of the Grantees enters into, or proposes to enter into, any agreement, arrangement or course of conduct which may be reasonable foreseen as resulting in a change of use of the Roadway Easement (whether by reason of a change of quality or of a change of degree), such Grantee shall promptly give written notice thereof to Grantor and each of the other Grantees. This notice shall provide in reasonable detail the nature and anticipated duration of the agreement, arrangement or course of conduct. In all such events, such notice shall be given whenever any partition or subdivision is proposed to be made with respect to any Appurtenant Property owned by any of the Grantees.

(d) In addition to its right to damages and any other rights it may have, any Party will be entitled to obtain injunctive or other equitable relief to restrain any breach or threatened breach or otherwise to specifically enforce the provisions of this Section 3.02, it being understood and agreed that money damages alone would be inadequate to compensate such Party and would be an inadequate remedy for such breach.

Section 3.03 No Other Easements Effected.

Except as expressly provided herein, this Agreement is not intended to modify or otherwise effect any easement (whether created by express or implied grant or reservation, by prescription, by operation of law or otherwise) appurtenant to any Appurtenant Property as of the date hereof, including any express or implied easement granted or reserved by any of the Grantees or their respective predecessors in interest.

ARTICLE IV. REPAIRS AND MAINTENANCE OF EASEMENT

Section 4.01 Repairs, Services and Maintenance Defined.

The repairs, services and maintenance to be undertaken and performed under this Agreement shall include

- (a) grading,
- (b) filling of chuckholes,
- (c) snow removal,
- (d) resurfacing, and,

(e) such other action that the Agent deems reasonably necessary or advisable to maintain the Roadway Easement in a condition suited for its intended uses or in conformity with applicable law.

Section 4.02 Expenses of Repairs, Services and Maintenance.

(a) Each of the Parties shall share equally in the payment of the costs and expenses of repairs, services and maintenance of the Roadway Easement and of the compensation payable to the Agent under Section 4.03 hereof.

(b) If any Party fails or refuses to pay his or her share of such costs and expenses or compensation within thirty (30) days from the demand therefor pursuant to Section 4.03 hereof, such Party shall be in default. The amount thereof, together with interest at a rate equal to the rate then in effect under Section 45-103 of the Nebraska Revised Statutes (or any successor provision), a late charge not exceeding ten percent (10%) of such amount as determined by Agent, and costs and reasonable attorney's fees incurred to collect such amount, shall constitute a lien on such Party's Appurtenant Property and on any rents and proceeds therefrom. Such lien may, but shall not be required to be, evidenced by a notice executed by the Agent and recorded with the Register of Deeds of Washington County, Nebraska setting forth the amount due and other charges and the legal description of the Appurtenant Property subject to the lien. Such lien shall be subordinate to the lien of any mortgage or deed of trust applicable to such Appurtenant Property now or hereafter existing.

Section 4.03 Designation of Agent.

(a) The Parties shall from time to time designate an agent of the Parties (the "Agent") to contract for and oversee the repairs and maintenance authorized under this Agreement. The Agent shall not be personally liable for any debts contracted pursuant to this Agreement. The Agent shall be entitled to receive fair and reasonable compensation for services rendered in contemplation hereof. Any Party shall be eligible to serve as the Agent; *provided, however*, that, in such event, he or she shall not be entitled to receive compensation therefor.

(b) The Parties may remove the Agent at any time with or without cause. Notice of such removal shall be given to the Agent not less than five (5) business days prior to the effective date of such removal.

(c) In the event of the death, resignation or removal of the Agent or of the existence of any other condition of the Agent that makes it impossible for the Agent to carry out his or her duties under this Agreement, the Parties shall appoint a new Agent.

(d) Because the services provided by the Agent hereunder are personal in nature, the Agent may not assign or delegate any of his rights and obligations hereunder without the prior consent of the Parties.

(e) Not less than ninety (90) days prior to the end of each calendar year, the Agent shall prepare and distribute to each of the Parties a proposed budget for the immediately succeeding year. Upon approval by not less than two-thirds of the Parties, the budget shall be binding upon all Parties hereto.

(f) Within fifteen (15) days following the last business day of each month, the Agent shall furnish to each of the Parties a written report of maintenance and repairs undertaken, and costs and expenses incurred, during the month then ended, together with copies of receipts for the payment of such costs and expenses. Concurrent with such report, the Agent shall furnish to each Party a statement for such Party's proportionate share of such costs and expenses and of the Agent's compensation for services rendered hereunder.

(g) Each of the Parties shall execute such powers of attorney, contracts of suretyship and other instruments as the Agent may reasonably require for him or her to carry out effectively the Agent's responsibilities hereunder.

(h) If the Parties so require, the Agent shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Parties shall determine. The cost of such bond shall be included in the costs and expenses payable by the Parties under Section 4.02 hereof.

ARTICLE V. ACTION BY PARTIES

Section 5.01 General.

Unless otherwise provided herein, whenever any consent, appointment, or other action is required or permitted to be jointly taken hereunder by the Parties, including the designation or removal of the Agent, such consent is given, appointment is made, or action is taken if a majority of the Parties votes in favor thereof, or otherwise concurs, at a meeting of the Parties.

Section 5.02 Meetings of the Parties.

Meetings of the Parties may be called from time to time by any of the Parties or the Agent. The call shall state the nature of the business to be transacted and the time and place of the meeting. Notice of any such meeting shall be given not less than three (3) days or more than thirty (30) days prior to the date of such meeting. In no event shall such meetings be held outside the State of Nebraska without the unanimous consent of the Parties. A majority of the Parties shall constitute a quorum.

Section 5.03 Voting Rights.

(a) In any meeting of the Parties, each Party shall have one vote. The Agent shall have no power to vote at any meeting except to the extent he or she holds the proxy of a Party given pursuant to Section 5.04 hereof.

(b) If any Appurtenant Property is owned in joint tenancy, tenancy in common, tenancy by the entirety, or other concurrent tenancy, the vote (or consent pursuant to Section 5.05 hereof) of any joint or concurrent tenant of such Appurtenant Property shall be conclusively presumed to be the vote (or consent) of all joint or concurrent tenants of such Appurtenant Property.

Section 5.04 Proxy Rights.

Each Party may authorize any person or persons to act for him or her by proxy on all matters in which a Party is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy shall be signed by the Party or his or her attorney-in-fact. Every proxy shall be revocable at the pleasure of the Party executing it, unless the proxy expressly provides otherwise.

Section 5.05 Written Consent in Lieu of Meeting.

Any action which may be taken at a meeting of the Parties may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by not less than a majority of the Parties. No such consent shall be effective until a copy thereof is delivered to the Agent and each of the Parties who did not sign the consent.

ARTICLE VI. INDEMNITY

Each of the Parties shall indemnify and hold the other Parties harmless from and against any and all liability for personal injury or property damage when such injury or damage shall result from, arise out of, or be attributable to any maintenance or repairs undertaken pursuant to this Agreement.

ARTICLE VII. COVENANTS RUNNING WITH THE LAND.

Except as otherwise provided in this Agreement, all easements, covenants and agreements herein shall be joint with each of the Parties, and each of their invitees, licensees, servants, agents, and visitors. The easements, covenants and agreements granted herein and their benefits and burdens are appurtenant to the Appurtenant Properties and shall run therewith. All easements, covenants and agreements granted herein shall be considered and construed as perpetual easements and covenants running with the Appurtenant Properties, and shall inure to the benefit of and extend to and be binding upon the respective successors, transferees, grantees, assignees, lessees, licensees, servants, agents and visitors of the Parties, the same as if they were in every case named and expressed and shall perpetually continue in full force and effect until terminated or annulled in accordance with this Agreement.

ARTICLE VIII. OPERATION OF EASEMENT GRANT AND RIGHTS NOT CONTINGENT

The operation of the perpetual grant of the Roadway Easement and the rights pertaining thereto shall not be deemed to be contingent upon the happening of any event or the taking of any other action by any Party and is not to be viewed as executory in any respect. Nonuse of the Roadway Easement by any of the Grantees shall not constitute evidence of the intent of such Grantee and its transferees, successors or assigns to abandon the Roadway Easement, irrespective of the duration of such nonuse. The Roadway Easement shall not be deemed to be abandoned unless and until each of the Grantees (or their respective transferees, successors or assigns) shall by written agreement, terminate or annul this Agreement.

ARTICLE IX. MISCELLANEOUS

Section 9.01 Severability.

If any of the provisions of this Agreement are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms and clauses of this Agreement shall remain valid and binding upon all of the Parties.

Section 9.02 Entire Agreement.

This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter herein and merges all prior discussions among them. No modification of or amendment to this Agreement may be made unless in writing executed by all of the Parties. No waiver of any rights under this Agreement shall be effective unless in writing signed by the Party to be charged.

Section 9.03 Absence of Third Party Beneficiary Rights.

This Agreement shall not confer any rights or remedies upon any person other than the Parties and the Agent and their respective successors, heirs and assigns.

Section 9.04 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs and assigns.

Section 9.05 *Governing Law.*

This Agreement shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of Nebraska.

Section 9.06 *No Joint Venture, Partnership, Etc.*

This Agreement is not intended to create a joint venture, partnership or other unincorporated association amongst the Parties or any of them. Except as expressly provided herein, no Party shall be deemed to be an agent of, or otherwise be empowered to bind, any other Party by reason of this Agreement.

Section 9.07 *Rights and Remedies.*

In the event any Party shall not be in compliance with the provisions of this Agreement, the Agent and the Parties shall have such rights and remedies arising as result of such failure and such other rights and remedies as may be available at law or in equity. The Agent and any of the Parties may prosecute any action or other proceedings against such a Party for enforcement of such provisions or foreclosure of any lien relating thereto and the appointment of a receiver for the Appurtenant Property, or damages, or injunctive relief, or specific performance, or judgment for payment of money and collection thereof, or any combination of such remedies or any other and further relief which may be available at the law or in equity. The proceeds of any foreclosure sale shall first be applied to discharge court costs, other litigation costs, including reasonable attorney's fees and all other expenses of the proceedings and sale. The rights and remedies provided for hereunder are cumulative and not alternative.

Section 9.08 *No Public Dedication.*

Nothing contained in this Agreement shall be deemed to constitute a dedication for public use or to create any rights in the general public or other third parties.

In Witness Whereof, each of the Parties hereto has executed this Agreement as of the date set forth above.

GRANTOR:

GRANTEES:

Roselyn T. Flanagan

Roselyn T. Flanagan

R.T.F.

Wayne L. Goetz

Wayne L. Goetz

Mary D. Goetz

Mary D. Goetz

James D. Thomson

James D. Thomson

Leota M. Thomson

Leota M. Thomson

Calvin B. Glidden

Calvin B. Glidden

Joyce M. Glidden

Joyce M. Glidden

George J. Meyer

George J. Meyer

Phyllis J. Meyer

Phyllis J. Meyer

KANSAS)
STATE OF ~~NEBRASKA~~)
MIAMI)ss.
COUNTY OF ~~WASHINGTON~~)

This instrument was acknowledged before me on Nov. 5, 1996, by Mary D. Goetz

My Commission Expires:
February 25, 1999
(SEAL)

Delores A. Herrs
Notary Public
Delores A. Herrs

