

DRIVEWAY EASEMENT AGREEMENT

Document Number

Document Title

THIS DRIVEWAY EASEMENT AGREEMENT (this "**Agreement**") is between *Alan Blechl and Melanie Blechl, a Married Couple as survivorship marital property, and Mark Westphal, individually* (collectively hereinafter "**Grantee**") and *the Town of Clayton, a municipality* (hereinafter "**Grantor**").

RECITALS:

A. Grantee is the owner of certain real property located in Winnebago County, Wisconsin, as legally described on the attached Exhibit A, and referred to on such exhibit and in this Agreement as "**Lots 1 and 2**".

B. Grantor is the owner of certain real property located in Winnebago County, Wisconsin, as legally described on the attached Exhibit B and referred to on such exhibit and in this Agreement as "**Lot 3**".

C. Without this Agreement, Lots 1 and 2 would be landlocked, therefore, Grantee and Grantor have agreed to formalize the existing easement allowing that Grantee be granted ingress and egress access to Lots 1 and 2 through the adjoining Lot 3 from County Highway II. Such easement, allowing for both vehicular and pedestrian access, is approximately thirty (30) feet wide and encompasses the entirety of the current easement area as highlighted and depicted on the "Easement Sketch" attached as Exhibit C hereto (the "**Easement Area**").

D. Grantee and Grantor are willing to create this Easement Agreement regarding the Easement Area under the terms of this Agreement.

Recording Area

Name and Return Address:

Benjamin LaFrombois, Esq.
MG&M The Law Firm
1 S. Dearborn Street, Suite 1500
Chicago, IL 60603

Parcel Identification Numbers (PINs):

006-039107, 006-0391, 006-039104, 006-039105

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- 1. Grant.** Grantor hereby grants and conveys to Grantee, its successors and assigns, a nonexclusive easement and right-of-way to use the Easement Area for ingress and egress from County Highway II to Lots 1 and 2 (the "**Easement**").
- 2. Permitted Users and Use.** The Easement granted in Section 1, above, may be used by Grantees, their invitees, guests, or agents, for any legal ingress and egress purposes. Notwithstanding the foregoing, permitted use of the Easement Area shall comply with all applicable laws and ordinances, and Grantees shall be responsible for ensuring that their invitees, guests, and agents comply with such requirements. Grantor reserves the right to use Lot 3 in any manner and for any purpose that does not interfere with Grantee's Easement rights and its use of the Easement.
- 3. Easement Maintenance and Repair.** In the event the surface of any portion of the Easement Area is disturbed by Grantee's exercise of any of its easement rights under this Agreement, such area shall be restored to the condition in which it existed as of the commencement of such activity. Grantee hereby assumes the obligation, including all costs and expenses, to maintain and repair the Easement Area. In addition to the foregoing, Grantee shall perform necessary maintenance so as to keep the Easement Area at all times in the same condition as existed on the effective date of this Agreement.

Document prepared by:
Benjamin LaFrombois, Esq.
MG+M The Law Firm
1 S. Dearborn Street, Suite 1500
Chicago, IL 60603
WI SBN: 1027910
Phone: 312.754.2492

THIS PAGE IS PART OF THIS LEGAL DOCUMENT – DO NOT REMOVE

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.
WRDA Rev. 12/22/2010

- 4. Improvements.** Grantee shall have the right to make improvements to the Easement Area, upon approval of the Grantor, such approval to not be unreasonably withheld, that are reasonably related to both the purpose of the Easement and Grantee's use and enjoyment of the Easement (the "**Improvements**"), at Grantee's sole expense, upon not less than thirty (30) days' prior written notice to Grantor. Notwithstanding the foregoing, the Improvements shall be constructed in a workmanlike manner and shall not: (i) interfere with Grantor's use or enjoyment of their property outside the Easement Area, (ii) violate any applicable laws, ordinances, or regulations, (iii) impose any financial, legal, or maintenance obligations on Grantor, or (iv) impair the value of Lot 3. Any driveway must be designed and constructed in accordance with sound engineering principles customarily applied to commercial private driveways within the Town and shall be of sufficient width to accommodate two lanes of vehicular traffic. This grant does not create an obligation for Grantor to improve or maintain the Easement Area.
- 5. Plans.** Prior to performing Improvements, Grantee shall provide Grantor with as-built drawings and a survey showing the location of and specifications of the Improvements to be installed in the Easement Area.
- 6. Costs/Lien-Free Construction.** Grantee shall bear and promptly pay without the imposition of any lien or charge on or against all or any portion of Lot 3, all costs and expenses incurred by Grantee in connection with the construction and maintenance of the Improvements. Grantee hereby acknowledges and agrees that if any lien is filed against Lot 3 as a result of the Easement or Grantee's activities in the Easement Area and Grantee has not had such lien removed of record within thirty (30) days of the date of the initial filing of such lien, Grantee shall be in default of this Agreement, and Grantor shall have the right to exercise all of its remedies pursuant to this Agreement, at law and in equity.
- 7. Reservation of Rights.** All right, title, and interest in and to the Easement Area which may be used and enjoyed without interfering with the rights conveyed by this Agreement are reserved to Grantor. Grantor shall have the right to grant additional easement rights in the Easement Area provided same shall not interfere with, or otherwise adversely affect any of Grantee's rights herein. Grantor's use and enjoyment of the Easement Area shall not interfere with, or adversely affect any of Grantee's rights herein.
- 8. Covenants Run with Land.** All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by Grantee and Grantor and their respective successors and assigns. The Easement granted under Section 1 of this Agreement is an easement appurtenant to Lots 1, 2 and 3, and may not be transferred separately from, or severed from, title to Lots 1, 2, and 3, respectively. Furthermore, the benefits of the easements granted under this Agreement shall not be extended to any properties other than Lots 1, 2 and 3 without the written consent of Grantee and Grantor. The specific parties named as Grantee and Grantor in this Agreement, and each of their respective successors and assigns as fee simple owners of Lots 1, 2, and 3, respectively, or any portion of Lots 1, 2, or 3, shall cease to have further liability under this Agreement with respect to facts or circumstances first arising after the party has transferred its fee simple interest in Lots 1, 2, and/or 3, respectively, except, however, for obligations that accrued during the party's period of ownership of title.
- 9. Relocation.** Grantor shall have the right, in Grantor's sole discretion, to relocate the Easement Area with no less than sixty (60) days' notice to Grantee, provided that the relocated Easement provides Grantee with substantially the same utility, functionality and usability as the original Easement Area. Grantor shall bear all costs and expenses associated with such relocation, including but not limited to any design, construction, grading, or restoration necessary to make the related Easement Area suitable for Grantee's continued use. Grantee may relocate the Easement Area if prior written consent is obtained from Grantor, which consent may be given or withheld in Grantor's sole and absolute discretion. If Grantee desires to relocate the Easement and/or Easement Area, Grantee shall send a request, in writing, to Grantor. Grantor shall respond to such request to relocate, in writing, within thirty (30) days of receiving the necessary approvals/denials for such relocation request. If the parties agree to relocate the Easement and/or Easement Area, then this Agreement shall be amended to reflect same. Both Grantor and Grantee hereby acknowledge and agree that the party requesting the relocation shall be responsible for all the costs and expenses, including reasonable attorneys' fees of the other party, incurred in connection with relocating the Easement and/or Easement Area.
- 10. Default and Remedies.** In the event of a default by Grantor or Grantee, the non-defaulting party may seek any and all remedies permitted by law.
- 11. Grantor Not Liable.** In no event shall Grantor be liable for any damage to, or loss of, personal property or equipment sustained by Grantee within the Easement Area, whether or not it is insured, even if such loss is caused by the negligence of Grantor.
- 12. Limitation of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN THE EVENT OF A DEFAULT BY GRANTOR HEREUNDER, OR FOR ANY OTHER REASON, GRANTOR SHALL NOT BE LIABLE TO GRANTEE FOR ANY INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING LOSS OF GOODWILL OR LOSS OF PROFITS.

- 13. Indemnification by Grantee.** Grantee shall indemnify, defend, and hold harmless Grantor and its members, agents and employees from all liability, suits, actions, claims, costs, damages, and expenses of every kind and description, including court costs and legal fees, for claims of any character, including liability and expenses in connection with the loss of life, personal injury, or damage to property, brought because of any injuries or damages received or sustained by any person, persons, or property on account of or arising out of the use of the Easement Area by Grantee or its agents, contractors, subcontractors, invitees, or employees, not caused by the intentional or negligent acts of Grantor or its members, agents, employees, contractors or subcontractors. Grantee shall further indemnify Grantor against any damage or costs associated with the Improvements.
- 14. Indemnification by Grantor.** Grantor shall indemnify, defend and hold harmless Grantee and its members, agents and employees from all liability, suits, actions, claims, costs, damages, and expenses of every kind and description, including court costs and legal fees, for claims of any character, including liability and expenses in connection with the loss of life, personal injury, or damage to property, brought because of any injuries or damages received or sustained by any person, persons, or property on account of or arising out of the use of the Easement Area by Grantor or its agents, contractors, subcontractors, invitees, or employees, not caused by the intentional or negligent acts of Grantee or its members, agents, employees, contractors, or subcontractors.
- 15. Equal Rights.** Grantee and Grantor shall have equal rights of ingress and egress over the Easement Area and shall take no action to prevent the other party's use and enjoyment of such rights except in the event of a violation of any provision of this Agreement. Notwithstanding the foregoing, such equal rights shall not impair Grantor's ability to reasonably regulate or limit access to the Easement Area for the purpose of preventing interference with Grantor's use and enjoyment of its property.
- 16. No Public Dedication.** Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the Easement granted under this Agreement to the general public or for any public purpose whatsoever. Grantee and Grantor agree to cooperate with each other and to take such measures as may be necessary to prevent the dedication to the public of the Easement Area, whether by express grant, implication, or prescription, including, without limitation, the posting of "Private Drive" or "No Trespassing" signs. Such measures shall not, however, unreasonably interfere with the easement rights granted under this Agreement.
- 17. No Known Claims.** The parties represent and warrant that, to the best of their knowledge, there are no existing, pending, or threatened claims, disputes, encumbrances, liens, or legal proceedings by any third party relating to or affecting the Easement Area. Neither party shall be held liable to the other for any claims, disputes, or actions arising from the Easement Area that were not disclosed to them in writing prior to the execution of this Agreement. Furthermore, neither party assumes any obligation to defend or indemnify the other or any third-party against such claims, except as expressly agreed in writing.
- 18. Amendment.** This Agreement may not be modified, amended, or terminated except in a writing signed by each party hereto.
- 19. Non-Use.** Non-use or limited use of the easement rights granted in this Agreement shall not prevent Grantee or Grantor from later use of the easement rights to the fullest extent authorized in this Agreement.
- 20. Termination of this Agreement.** This Agreement shall continue indefinitely until termination of this Agreement in accordance with this Section. This Agreement may be terminated by a written document executed and acknowledged by all then-owners of Lot 3 and all then-owners of Lots 1 and 2, and duly recorded in the office of the Register of Deeds of Winnebago County, Wisconsin. Upon termination of this Agreement under this Section, either Grantee or Grantor may, on its own accord, record in the office of the Register of Deeds a memorandum of termination of this Agreement, which may be executed by either Grantee or Grantor.
- 21. Re-recording.** Unless this Agreement is terminated under Section 20 hereof, Grantor and Grantee will each possess the right to re-record this Agreement without consent of the other.
- 22. Notice.** Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required or permitted hereunder shall be in writing and delivered to the addresses set forth below, by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (c) registered United States mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or (d) electronic transmission (email) provided that the transmission is completed no later than 4:00 p.m. Central Time on a business day and the original also is sent via overnight courier or United States Mail, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

To Grantor: Name: Town of Clayton
Address: 8348 Hickory Avenue, Larsen, WI 54947
Attn: Administrator Wisnefske
Telephone: (920) 836-2007
Email: administrator@claytonwinnebago.wi.gov

with a copy to: Name: MG+M The Law Firm
Address: 1 S. Dearborn St., Suite 1500, Chicago, IL 60603
Attn: Ben LaFrombois
Telephone: (312) 754-2492
Email: blafrombois@mgmlaw.com

To Grantee: Name: Mark Westphal
Address: 945 Hunt Avenue, Neenah, WI 54956
Telephone:
Email:

Name: Alan and Melanie Blechl
Address: 3006 County Road II, Neenah, WI 54956
Telephone:
Email:

with a copy to: Name: Remley Law, S.C.
Address: 2 Neenah Center, Suite 100, Neenah, WI 54956
Attn: Matthew Borkovec
Telephone: (920) 725-2601
Email: MBorkovec@remleylaw.com

Any party may change its address for purposes of this Section 22 by giving written notice as provided in this Section 22. All notices and demands delivered by a party's attorney on a party's behalf shall be deemed to have been delivered by said party. Notices shall be valid only if served in the manner provided in this Section 22.

23. Governing Law. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE REAL PROPERTY IS LOCATED. EACH PARTY HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE TRIED AND LITIGATED IN STATE OR FEDERAL COURTS LOCATED IN THE STATE WHERE REAL PROPERTY IS LOCATED, UNLESS SUCH ACTIONS OR PROCEEDINGS ARE REQUIRED TO BE BROUGHT IN ANOTHER COURT TO OBTAIN SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ANY RIGHT ANY PARTY HERETO MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, TO ASSERT THAT ANY PARTY HERETO IS NOT SUBJECT TO THE JURISDICTION OF THE AFORESAID COURTS, OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 21. SERVICE OF PROCESS, SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST ANY PARTY HERETO, MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ANY SUCH PARTY'S ADDRESS INDICATED IN SECTION 22 OF THIS AGREEMENT.

24. Mediation. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. Grantor and Grantee shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association. A request for mediation shall be made in writing, delivered to the other party, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The fees of the mediator and the cost of the mediation shall be paid by the non-prevailing party. The mediation shall be held in the county where the real property is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the parties do not resolve a dispute through mediation pursuant to this Section 24, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction. The non-prevailing party in any such dispute shall pay the prevailing party's reasonable attorneys' fees and costs incurred. In the event that neither party wholly prevails, the court or mediator, as applicable, may apportion the costs or fees as the court or mediator deems appropriate.

25. **Invalidity.** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
26. **Waiver.** No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.
27. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds of Winnebago County, Wisconsin.
28. **Authority.** Both parties represent and warrant that they have the authority to execute this Agreement and each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.
29. **Further Cooperation.** Each of the signatories to this Agreement agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed intent and purpose of this agreement.
30. **Condition Precedent.** As a condition precedent to this Agreement becoming effective, the Parties agree to enter into an Easement Settlement and Release Agreement of even date herewith.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE TO DRIVEWAY EASEMENT AGREEMENT

Alan Blechl

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)ss
COUNTY OF _____)

Personally came before me on _____
the above-named Alan Blechl to me known to be
the person(s) who executed the foregoing
instrument and acknowledged the same.

Notary Public, State of Wisconsin

My commission expires:_____

Melanie Blechl

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)ss
COUNTY OF _____)

Personally came before me on _____ the
above-named Melanie Blechl to me known to be the
person(s) who executed the foregoing instrument and
acknowledged the same.

Notary Public, State of Wisconsin

My commission expires:_____

Town of Clayton, a Wisconsin municipal corporation

By: _____
Russ Geise, Town Chair

By: _____
Kelsey Faust-Kubale, Clerk

Mark Westphal

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)ss
COUNTY OF _____)

Personally came before me on _____
the above-named Mark Westphal to me known to
be the person(s) who executed the foregoing
instrument and acknowledged the same.

Notary Public, State of Wisconsin

My commission expires:_____

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)ss
COUNTY OF _____)

Personally came before me on _____ the
above-named Russ Geise and Kelsey Faust-Kubale to me
known to be the person(s) who executed the foregoing
instrument and acknowledged the same.

Notary Public, State of Wisconsin

My commission expires:_____

Exhibit A

Lots 1 and 2 Legal Description

Owner: Mark Westphal

PIN 006-039107 described as:

Lot Two (2) of CERTIFIED SURVEY MAP NO. 6543 recorded in Volume 1 of Certified Survey Maps on Page 6543 as Document No. 1574436; said map being all of Lot 1 of Certified Survey Map 1997, and all of Lot 1 of Certified Survey Map 6147, being part of the Northeast 1/4, Northwest 1/4, Southwest 1/4, and Southeast 1/4 of the Southeast 1/4 of Section 14, Township 20 North Range 16 East, Town of Clayton, Winnebago County, Wisconsin.

Owner: Melanie Blechl and Alan Blechl

PIN 006-0391 described as:

Lot One (1) of Certified Survey Map No. 6543, recorded in the office of the Register of Deeds for Winnebago County, Wisconsin, on June 20, 2011, in Volume 1, Page 6543, as Document No. 1574436, being a part of the Southeast Quarter (SE 1/4) of Section 14, Township 20 North, Range 16 East, Town of Clayton, Winnebago County, Wisconsin.

PIN 006-039104 described as:

Lot Three (3) of Certified Survey Map No. 6543, recorded in Volume 1 of Certified Survey Maps on Page 6543 as Document No. 1574436; said map being all of Lot 1 of Certified Survey Map 1997, and all of Lot 1 of Certified Survey Map 6147, being part of the Northeast 1/4, Northwest 1/4, Southwest 1/4, and Southeast 1/4 of the Southeast 1/4 of Section 14, Township 20 North, Range 16 East, Town of Clayton, Winnebago County, Wisconsin.

Exhibit B

Lot 3 Legal Description

Owner: Town of Clayton

Parcel ID 006-039105 described as:

Lot One (1) of Certified Survey Map 6174, recorded in the Winnebago County Register of Deeds Office in Volume 1 Page 6174 as Document Number 1452878, said Certified Survey Map being part of Certified Survey Map 6147 and part of the Southeast 1/4 of the Southeast 1/4, Section 14, Township 20 North, Range 16 East, Town of Clayton, Winnebago County, Wisconsin.

