

Document No.

**FIRST AMENDED SHARED DRIVEWAY  
EASEMENT AGREEMENT**

Return to:  
Olson Legal Group LLC  
146 Algoma Blvd. Suite A  
Oshkosh, WI 54901

022-043701; 022-043702; &  
022-0493  
Parcel Numbers

THIS SHARED DRIVEWAY EASEMENT AGREEMENT (the *Agreement*) is between Daniel L. Kallas (*Parcel A Owner*); Daniel L. Kallas (*Parcel B Owner*); and Winnebago County (*Parcel C Owner*).

**RECITALS:**

A. Parcel A Owner is the owner of certain real property located in the Town of Rushford, Winnebago County, Wisconsin, as described on the attached Exhibit A and referred to on the exhibit and in this Agreement as *Parcel A*.

B. Parcel B Owner is the owner of certain real property located in Town of Rushford, Winnebago County, Wisconsin, as described on the attached Exhibit B and referred to on the exhibit and in this Agreement as *Parcel B*.

C. Parcel C Owner is the owner of certain real property located in Town of Rushford, Winnebago County, Wisconsin, as described on the attached Exhibit C and referred to on the exhibit and in this Agreement as *Parcel C*.

D. Parcel A Owner and Parcel B Owner wish to grant each other the right to use a driveway (the *Driveway*) previously constructed on that portion of Parcel A and more particularly described on the attached Exhibit D and referred to on the exhibit and in this Agreement as the *Easement Property*, and shall be subject to this Agreement.

D. Parcel A Owner, Parcel B Owner, and Parcel C Owner are willing to create an easement over the *Easement Property* to enable Parcel A Owner and Parcel B Owner to use the Driveway, under the terms of

this Agreement.

## AGREEMENT

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

**1. Grant.** Parcel A Owner, Parcel B Owner, and Parcel C Owner grant a nonexclusive easement and right-of-way to Parcel A Owner and Parcel B Owner and their successors and assigns to use the Driveway and the Easement Property as a joint driveway for ingress and egress to and from County Road E.

**2. Permitted Users.** The easement granted in Section 1, above, may be used by the Parcel A Owner and Parcel B Owner and their tenants, guests and invitees.

**3. Maintenance Costs.** Parcel A Owner and Parcel B Owner shall bear all maintenance expenses equally. Maintenance and improvements will be undertaken and made whenever necessary to maintain the Driveway in good operating condition at all times and to insure the provision of safe access by all vehicular traffic, including emergency vehicles. A majority vote of Parcel Owners (only Parcel A Owner and Parcel B Owner) is required for any road improvements and to accept the bid for any road improvement contract. Before authorizing expenditures for future road improvements or repairs, Parcel Owner A and Parcel B Owner will designate one owner to solicit cost estimates for any such repair, maintenance or improvement, and a majority agreement will be required in order to proceed with any such repair, maintenance or improvement. If Parcel A Owner or Parcel B Owner performs improvements, maintenance, repairs or replacements without the approval of the other Parcel Owner (as to Parcel A Owner or Parcel B Owner only) prior to performing such work, the Parcel Owner (as to Parcel A Owner or Parcel B Owner only) performing such work shall become liable for the entire cost thereof. If Parcel Owner A and Parcel Owner B or their occupants, agents, guests are negligent and causes damage to the Driveway, said Parcel Owner (as to Parcel A Owner or Parcel B Owner only) shall bear the entire cost to repair and otherwise remedy the damage. Parcel C Owner shall have no maintenance liability or general liability.

**4. Speed Limit.** The speed limit on the Driveway for any motorized vehicles is limited to 15 miles per hour.

**5. Parking.** For the safety of the residents, no machinery, trailers, vehicles or other property may be stored or parked upon the Driveway except parking of vehicles for limited periods of time (not to exceed 4 hours).

**6. Equal Rights of Use.** Parcel A Owner and Parcel B Owner shall have equal rights of ingress and egress over the Driveway and shall take no action to prevent the other party's enjoyment of such rights.

**7. 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 Parcel B Owner and Parcel A Owner and their respective successors and assigns. The easement granted under Section 1 of this Agreement is an easement appurtenant to Parcel A and Parcel B and may not be transferred separately from, or severed from, title to Parcel A and Parcel B. Furthermore, the benefits of the easements granted under this Agreement shall not be extended to any properties other than Parcel A and Parcel B without the consent of Parcel A Owner and Parcel B Owner. The specific parties named as Parcel A Owner and Parcel B Owner in this Agreement, and each of their respective successors and assigns as fee simple owners of Parcel A and Parcel B, respectively, or any portion of Parcel A or Parcel B, 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 Parcel A or Parcel B, respectively, except, however, for obligations that accrued during the party's period of ownership of title.

**8. Non-Use.** Non-use or limited use of the easement rights granted in this Agreement shall not prevent Parcel A Owner and Parcel B Owner from later use of the easement rights to the fullest extent authorized in this Agreement.

**9. Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin, Winnebago County.

**10. 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.

**11. 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.

**12. Disputes** Parcel A Owner and Parcel B Owner agree to attempt to resolve any dispute, claim or controversy arising out of or related to this Agreement. The parties further agree that their respective good faith participation in Mediation is a condition precedent to pursuing any other available legal or equitable remedy, including litigation, or other dispute resolution procedure. Any Parcel Owner may commence the Mediation process by providing the other parcel owner written notice, setting forth the subject of the dispute, claim or controversy and relief requested. Within twenty (20) days after the receipt of the foregoing notice, the other parcel owner shall deliver a written response to the initiating party's notice. Parcel A Owner and Parcel B Owner shall attempt to agree on a Mediator, and if they fail to do so within thirty (30) days after the initiating party has received the written response, then in such event, the Parcel Owner shall jointly petition the Circuit Court for Winnebago County requesting the Court appoint a Mediator to mediate the dispute. The parties agree to share equally the costs of the Mediation (which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation).

The parties further acknowledge and agree that mediation proceedings are settlement negotiations, and that, to the extent allowed by applicable law, all offers, promises, conduct and statements, whether oral or written, made in the course of mediation by any of the parties or their agents shall be confidential and inadmissible in any other legal action involving the parties, provided, however, that evidence which is otherwise admissible or discoverable shall not be rendered inadmissible or undiscoverable as a result of its use in the mediation.

**13. 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. Parcel A Owner and Parcel B Owner agree to cooperate with each other and to take such measures as may be necessary to prevent the dedication to the public of the Driveway, 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.

**14.** This document shall revoke and replace the Shared Driveway Easement Agreement dated October 23, 2017 and recorded on October 23, 2017 in the Office of Register of Deeds for Winnebago County as Document Number: 1752387.

Dated: November \_\_\_\_\_, 2017

PARCEL A OWNER & PARCEL B OWNER

\_\_\_\_\_  
Daniel L. Kallas

PARCEL C OWNER

\_\_\_\_\_  
\_\_\_\_\_  
Corporation Counsel  
Winnebago County

STATE OF WISCONSIN     )  
  )ss  
WINNEBAGO COUNTY     )

Personally came before me this \_\_\_\_\_ day of January, 2018, the above-named Daniel L. Kallas, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
\*  
\_\_\_\_\_  
Notary Public, Winnebago County, WI  
My Commission is/expires: \_\_\_\_\_

STATE OF WISCONSIN     )  
  )ss  
WINNEBAGO COUNTY     )

Personally came before me this \_\_\_\_\_ day of January, 2018, the above-named \_\_\_\_\_, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
\*  
\_\_\_\_\_  
Notary Public, Winnebago County, WI  
My Commission is/expires: \_\_\_\_\_

This instrument drafted by:  
Attorney Nathan P. Olson  
Olson Legal Group LLC  
146 Algoma Blvd. Suite A  
Oshkosh, WI 54901  
(920) 230-7020 – Phone  
(920) 230-7021 – Fax  
www.olsonlegalgroup.com

**EXHIBIT A**

(Legal description of Parcel A)

Lot One (1) of Certified Survey Map No. 7259 as filed in the Office of the Register of Deeds for Winnebago County, on September 22, 2017 as Document No. 1749923, being all of Government Lot One (1) and part of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼), all in Section 22, Township 18 North, Range 14 East, Town of Rushford, Winnebago County, Wisconsin.

Tax Parcel Number: 022-043701

**EXHIBIT B**

(Legal description of Parcel B)

Lot Two (2) of Certified Survey Map No. 7259 as filed in the Office of the Register of Deeds for Winnebago County, on September 22, 2017 as Document No. 1749923, being all of Government Lot One (1) and part of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼), all in Section 22, Township 18 North, Range 14 East, Town of Rushford, Winnebago County, Wisconsin.

Tax Parcel Number: 022-043702

**EXHIBIT C**

(Legal description of Parcel C)

Part of the Northwest Quarter (NW ¼) of the Southwest Quarter (SW ¼) for Highway purposes, consisting of approximately 4.5 acres, in the Town of Rushford, Winnebago County, Wisconsin.

Tax Parcel Number: 022-0493

## **EXHIBIT D**

### **(Easement Property)**

An easement for ingress and egress as shown as the “existing driveway” on Certified Survey Map No. 7259, as filed in the Office of the Register of Deeds for Winnebago County, on September 22, 2017 as Document No. 1749923, being all of Government Lot One (1) and part of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼), all in Section 22, Township 18 North, Range 14 East, Town of Rushford, Winnebago County, Wisconsin.

Tax Parcel Number: 022-043701; 022-043702; and 002-0493