

Fidelity National
Title Company LLC

732201549

ACCESS EASEMENT AND MAINTENANCE AGREEMENT

30th This Access Easement and Maintenance Agreement ("Agreement") is made effective as of the day of November, 2022, by **Bradley J. Cooper and Martha J. Cooper**, husband and wife (collectively "**Grantee**") and **Nicholas Cooper and Michelle Cooper**, husband and wife (collectively "**Grantor**") (all collectively the "Parties" or singularly "Party").

RECITALS

A. Grantor is the owner of record, in fee simple, of certain real estate located in Whitley County, Indiana, by virtue of that certain Warranty Deed recorded as Document No. 2022120028, in the Office of the Recorder of Whitley County, Indiana ("Grantor Parcel").

B. Grantee is the owner of record, in fee simple, of certain adjacent real estate located in Whitley County, Indiana by virtue of that certain Warranty Deed recorded as Document No. 2002040823 in the Office of the Recorder of Whitley County, Indiana ("Grantee Parcel").

C. The Grantor Parcel and the Grantee Parcel are referred to collectively as the "Parcels".

D. The Parties desire to provide access to the Grantee Parcel through a driveway ("Driveway") on the Grantor Parcel and to provide for the Driveway maintenance responsibilities by the Parties.

AGREEMENT

The Parties, intending to be legally bound, agree as follows:

1. **GRANT OF ACCESS EASEMENT.** The Grantor grants and conveys to the Grantee, their successors in title, assigns, tenants, and invitees ("Permitted Users"), and to members of public and quasi-public agencies (the latter for emergency purposes only) for the benefit of the Grantee Parcel, a non-exclusive, permanent easement for pedestrian and vehicular ingress, egress, access, passage, and delivery to and from the Grantee Parcel along, over, and across the Driveway as constructed and maintained pursuant to the terms of this Agreement ("Easement"); as legally described and depicted on **Exhibit "A"** attached hereto.

2. **DRIVEWAY LOCATION/OBSTRUCTIONS.** Except as otherwise provided in this Agreement, or except in cases of emergency, routine repairs, maintenance, or to the extent reasonably deemed necessary to prevent a dedication of the Driveway or the accrual of any rights to the public, no

walls, fences, barriers of any sort, buildings, signs or other structures shall be constructed or maintained on the Driveway. The Driveway may not be modified, moved, reduced or enlarged without the prior written consent of all Parties or their successors in interest.

3. ***USE AND MAINTENANCE OF DRIVEWAY.*** The Parties agree to use and maintain the Driveway as follows:

No Party shall allow vehicles to park on the Driveway in a manner that obstructs the use thereof by the other Party. Nothing in this Agreement shall be deemed to be a conveyance, grant, gift or dedication of any right or interest in any portion of the Driveway to the general public or for general public use. This Agreement shall not confer upon any person, other than the Parties, or their successors and assigns, or other Permitted Users, any rights or remedies under or by reason of this Agreement. The Driveway shall be used only by vehicular and agricultural equipment for crop farming and/or residential purposes and shall not be used for any commercial or industrial use whatsoever, including any animal farming use, wind farm use or other commercial purposes.

The Parties shall each be equally responsible for maintenance and repair of Driveway, including the repair and replacement of the gravel, concrete or paving, as necessary, with such surface being maintained in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall be comparable in quality, use and durability (collectively, "Maintenance"). For the purpose of this Agreement, Maintenance shall be paid equally by the Parties within thirty (30) days after being presented with an invoice.

A Party causing damage to the Driveway shall be responsible to promptly repair the damage at its expense and failure to promptly undertake such repairs shall be an event of default hereunder.

The Parties shall indemnify and save harmless the each other from and against any and all liabilities, damages, penalties or judgments, any and all actions, suits, proceedings, claims, demands, assessments, costs and expenses, including, without limitation, reasonable legal fees and expenses incurred in enforcing this indemnity, arising from injury to person or property sustained by anyone in and about the Parcels resulting from any act or omission of a Party or their Permitted Users. Each Party shall, at their own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against another Party or in which a Party may be impleaded with others upon any such above mentioned matter, claim or claims, except for those arising from the affirmative acts, omissions, bad faith or negligence of a Party.

The use and Maintenance of the Driveway, and the repairs to be performed pursuant to this Section 3, shall be done expeditiously and in such a manner so as to limit (as much as is reasonably practicable) any

interference with the use or occupancy of the Parcels. The level of Maintenance and costs incurred in undertaking such Maintenance shall be mutually determined by the Parties.

4. **RESTRICTIVE COVENANTS.** As the Parties have agreed that the use of the Driveway shall be limited to crop farming and/or residential use, Grantee hereby agrees and covenants that the Grantee Parcel shall not be used for any commercial or industrial use, but shall be limited to residential and/or crop farming purposes only.

5. **COVENANTS RUNNING WITH THE LAND.** The covenants and agreements of the Parties in this Agreement are made by each Party on their own behalf and on behalf of the successive owners of the Parcels, for the direct benefit of the Parties, and any successors in interest of the Parties. It being the intent of the Parties that the foregoing covenants and agreements shall be "covenants running with the land", the burdens of which shall be perpetual and binding on the Parcels.

6. **RIGHTS OF MORTGAGEES.** No breach of any of the provisions contained in this Agreement, or any enforcement of such provisions, shall defeat or render invalid the lien of any mortgage or of any deed or contract executed and relating to either the Parcels. However, if any of the Parcels (or any portion thereof) is sold pursuant to a foreclosure of any mortgage or under the provisions of any deed or contract, any purchaser and their successors and assigns shall hold such property subject to all of the terms and conditions contained in this Agreement. The Parties shall, upon execution of this Agreement, deliver to each other (for recording simultaneously with this Agreement), an agreement from the holders of any existing mortgages or other security instruments on their respective Parcels, subordinating the terms thereof to the terms of this Agreement. All future mortgages on either the Parcels (or any portion of either) shall be subordinate to this Agreement and all future amendments thereto.

7. **REMEDIES.** For the purposes of this Agreement, the term "Event of Default" shall mean the failure to observe or comply with any provision or covenant in this Agreement, and such default is not cured to the reasonable satisfaction of the non-defaulting Party within thirty (30) days of the date notice of such default is given, which notice shall specify with reasonable particularity the basis for the default claimed.

If an Event of Default occurs, the Party not in default may seek the following remedies, which shall be cumulative and are not mutually exclusive: (i) all legal and equitable remedies available; and (ii) the reasonable attorneys' fees, expenses and costs incurred in connection with an Event of Default.

The Parties agree that it may be impossible to measure in money the damages which will accrue to a Party by reason of a failure to perform any of the obligations under this Agreement. Therefore, if a Party institutes any action or proceeding against the another Party to specifically enforce the provisions of this

Agreement, the Party against whom such action or proceeding is brought shall be deemed to waive the claim or defense that such Party has an adequate remedy at law. The failure to enforce a breach of this Agreement shall not be construed as a waiver of the right to enforce such breach at a later time or to enforce any other breach. If a Party consists of more than one person, each person who is a Party shall be jointly and severally liable for such Party's defaults.

8. **NOTICES.**

7.1 **Written Notice.** Any notice, designation, consent, approval, offer, acceptance, statement, request, or other communication required or allowed under this Agreement ("Notice") shall be in writing. Any action required under this Agreement that is a term within the definition of "Notice" also shall be in writing.

7.2 **Place of Notice.** Notice to the Parties shall be given at their respective addresses shown in the records of the office of the Treasurer of Whitley County, Indiana, for the mailing of tax bills, or at such other address as an owner may designate in a document recorded in the Office of the Recorder of Whitley County, Indiana.

8.3 **Manner of Giving Notice.** Notice shall be deemed given when:

8.3.1 Personal service of the Notice is made on the Party to be notified (but the Party need not be at the address designated under section 7.2);

8.3.2 The Notice is mailed to the Party to be notified by means of certified or registered U.S. mail, return receipt requested, postage prepaid; or

8.3.3 The Notice is sent to the Party to be notified by express courier such as "Federal Express" or such other similar carrier guaranteeing next day delivery.

7.4 **Refusal To Accept Notice.** Refusal by a Party to accept a Notice shall not affect the giving of the Notice.

9. **MISCELLANEOUS.**

8.1 **Binding Agreement.** This Agreement shall run with the land, and shall bind and inure to the benefit of the Parties and their respective legal representatives, heirs, successors, tenants and assigns.

8.2 **Invalid Provision/Severability.** The invalidity or unenforceability of any particular provision of

this Agreement shall not affect the other provisions of it; and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

8.3 **Amendments.** No amendments, modifications, alterations, or additions to this Agreement shall be binding unless made in writing and signed by the Parties at which time the instrument shall be recorded in the Office of the Recorder of Whitley County, Indiana.

8.4 **Governing Law.** This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance, or otherwise by the laws of the State of Indiana.

8.5 **Rule of Construction.** The judicial rule of construction requiring or allowing a document to be construed to the detriment or against the interests of the document's maker or drafter shall not apply to this Agreement.

8.6 **Headings.** The section headings in this Agreement are included solely for convenience, and shall in no event affect or be used in connection with the interpretation of this Agreement.

8.7 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties, all prior negotiations and agreements, whether written or oral, having been merged into this Agreement.

8.8 **Computation of Time.** In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday.

8.9 **Recitals.** All recitals set forth at the outset of this Agreement are incorporated by reference in it and are true.

8.10 **Review By Counsel.** Each Party has had the opportunity to have this Agreement reviewed by independent counsel before signing it.

8.11 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but together the counterparts shall constitute one and the same document.

This Agreement has been signed by the parties effective as of the date first written above.

"Grantor"

Nicholas Cooper
Nicholas Cooper

Michelle M. Cooper
Michelle Cooper

STATE OF INDIANA)
) SS:
COUNTY OF WHITLEY)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Nicholas Cooper and Michelle Cooper, husband and wife, and acknowledged the execution of the foregoing document.

Witness my hand and Notarial Seal, I have hereunto subscribed my name and affixed my official seal this 30 day of November, 2022.

My Commission Expires:

9-12-27
Commission Number: NP0722381

Notary Public

Printed:

Resident of Allen County, IN



TRICIA McKENNA, Notary Public
Allen County, State of Indiana
Commission Number NP0722381
Commission Expires September 12, 2027

"Grantee"

Bradley J. Cooper
Bradley J. Cooper

Martha A. Cooper
Martha A. Cooper

STATE OF INDIANA)
 Allen) SS:
COUNTY OF ~~WHITLEY~~)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Bradley J. Cooper and Martha A. Cooper, husband and wife, and acknowledged the execution of the foregoing document.

Witness my hand and Notarial Seal, I have hereunto subscribed my name and affixed my official seal this 30 day of Nov, 2022.

My Commission Expires:

9/12/27
Commission Number: NP0722381

[Signature]
Notary Public
Printed: Tricia McKenna
Resident of Allen County, IN

TRICIA McKENNA, Notary Public
Allen County, State of Indiana
Commission Number NP0722381



I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Timothy L. Claxton

This instrument prepared by Timothy L. Claxton, Attorney At Law, #14523-02
After recording, return to:

EXHIBIT "A"

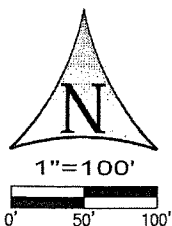
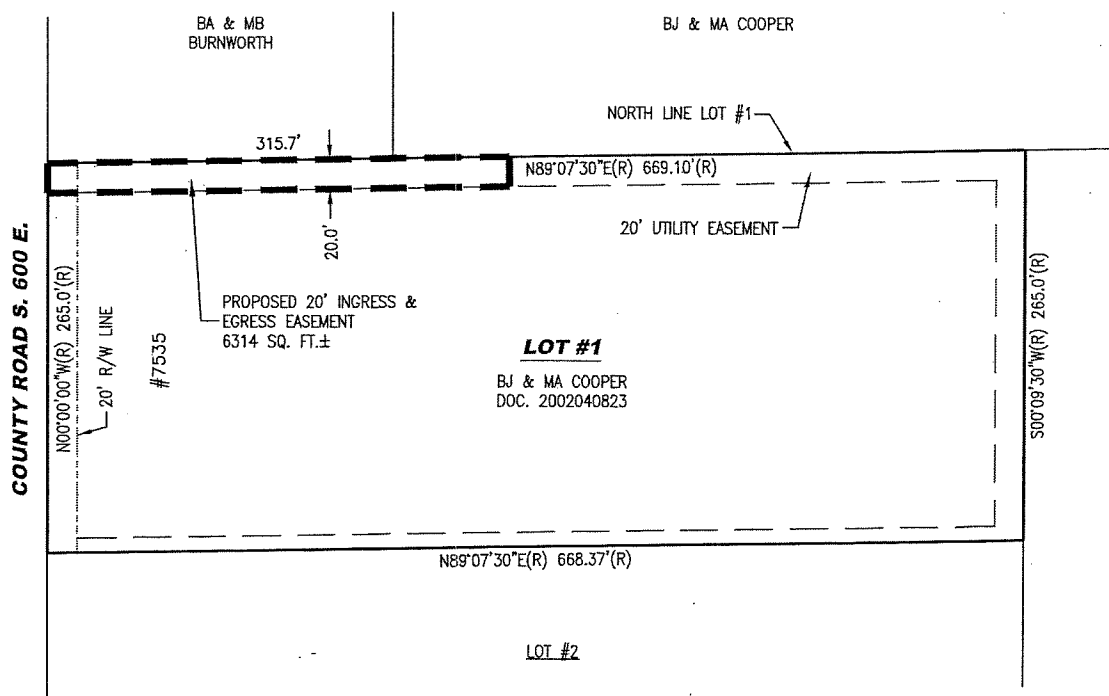
EASEMENT PLAT

EASEMENT DESCRIPTION:

An easement for ingress and egress described as follows:

The North 20 feet of the West 315.7 feet of Lot Number 1 in Glick's Subdivision, being a subdivision of the North Half of the West Half of the West Half of the Southwest Quarter of Section 14, Township 30 North, Range 10 East, Whitley County, Indiana.

Said easement contains 6314 square feet, more or less.



Job for: COOPER
Date: 11-29-22

ABONMARCHE

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SHEET 1 OF 1