

## **REAL ESTATE GIFTING AGREEMENT**

This Real Estate Gifting Agreement ("Agreement") is made and entered into by **DENNIS R. GRABENBAUER AND BARBARA K. GRABENBAUER**, husband and wife, (hereinafter referred to collectively as "DONOR"), and the **CITY OF MARSHALLTOWN, IOWA**, an Iowa municipal corporation ("CITY"), as of the date of the last signature set forth below ("Effective Date").

The DONOR hereby desires to gift to CITY and CITY desires to accept from DONOR, for the purpose of park land for public use, the real property ("Property") situated in the City of Marshalltown, Marshall County, Iowa, legally described as follows:

Parcel "B" located entirely within Lot "A" of the Subdivision of the SW 1/4 of the NW 1/4 of Section 33, Township 84 N, Range 18 W of the 5th P.M., Marshall County, Iowa described as follows: commencing at the NE corner of said Lot "A", also being the NE corner of the SW 1/4 of the NW 1/4 of said Section 33; thence, S1°52'01"E 339.93' along the E line of said Lot "A" to the point of beginning; thence, continuing S1°52'01"E 440.40' along said E line to the SE corner of said lot "A"; thence S88°39'48"W 209.86' along the S line of said Lot "A"; thence, S88°44'22"W 130.00' along said S line to a SW corner of said Lot "A"; thence, N1°53'10"W 446.06' along the W line of said Lot "A" to a corner on the S line of said lot "A", Also being the NE corner of Lot "C" in said subdivision; thence, N88°58'19"E 340.04' to the point of beginning, containing 3.47 acres. Subject to easements and restrictions of record, if any.

and as depicted on the Plat of Survey attached hereto as "Exhibit A," incorporated herein by this reference, together with any easements and appurtenant servient estates and subject to any reasonable easements of record for public utilities or roads, any zoning restrictions, customary restrictive covenants, and/or mineral reservations of record, if any, upon the following terms and conditions:

### **1. REAL ESTATE TAXES.**

- A. Unless otherwise provided in this Agreement, at closing DONOR shall pay CITY, or CITY shall be given a credit for, taxes from the first day of July prior to possession to the date of possession based upon the last known actual net real estate taxes payable according to public records. However, if such taxes are based upon a partial assessment of the present property improvements or a changed tax classification as of the date of possession, such proration shall be based on the current levy rate, assessed value, legislative tax rollbacks and real estate tax exemptions that will be applicable as shown by the assessor's records on the date of possession.
- B. CITY shall pay all subsequent real estate taxes to the extent required by law.

**2. SPECIAL ASSESSMENTS.**

- A. DONOR shall pay at time of closing all installments of special assessments which are a lien on the Property and, if not paid, would become delinquent during the calendar year this Agreement is effective, and all prior installments thereof.
- B. Any preliminary or deficiency assessment which cannot be discharged by payment shall be paid by DONOR through an escrow account with sufficient funds to pay such liens when payable, with any unused funds returned to DONOR.

**3. LIABILITY.** DONOR shall bear the risk of all liability for property damage or bodily injury occurring with respect to the Property during DONOR'S possession of the Property and prior to closing or possession, whichever first occurs. In the event a suit for liability with respect to the Property is filed prior to closing, or in the event DONOR is notified or otherwise learns of an incident giving rise to a suit for liability at any time prior to closing, this Agreement shall, subject to CITY'S discretion, be declared null and void.

**4. POSSESSION AND CLOSING.** If CITY timely performs all obligations, possession of the Property shall be delivered to CITY upon closing, and any adjustments of rent, insurance, interest and all charges attributable to DONOR'S possession, if any, shall be made as of the date of closing. Closing shall occur after approval of title by CITY and vacation of the Property by DONOR, but no later than 2018, unless otherwise mutually agreed by the parties. This transaction shall be considered closed upon the filing of the title transfer documents by CITY.

**5. CONDITION OF PROPERTY.** The Property, as of the date of this Agreement, will be preserved by DONOR in its present condition until possession. Except as otherwise provided in this Agreement, DONOR makes no warranties, expressed or implied, as to the condition of the property.

**6. ABSTRACT AND TITLE.** DONOR shall provide an abstract of title to CITY for the parent parcel from which the Property was split. CITY shall have a new abstract created at its expense. DONOR'S original abstract shall remain DONOR'S property and shall be returned to the DONOR after the new abstract is created. The new abstract shall show marketable title in DONOR in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association. DONOR shall make every reasonable effort to promptly perfect title. If closing is delayed due to DONOR'S inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten (10) days' written notice to the other party.

**7. SURVEY.** CITY, at its expense, has had the Property surveyed and certified by a registered land surveyor prior to closing.

**8. ENVIRONMENTAL MATTERS.**

- A. DONOR warrants to the best of its knowledge and belief there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances or underground storage tanks located on the Property, the Property does not contain levels of radon gas, asbestos or urea-formaldehyde foam insulation which require remediation

under current governmental standards, and DONOR has done nothing to contaminate the Property with hazardous wastes or substances. DONOR warrants the Property is not subject to any local, state or federal judicial or administrative action, investigation or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances or underground storage tanks. DONOR shall also provide CITY with a properly executed Groundwater Hazard Statement showing no wells, private burial sites, solid waste disposal sites, private sewage disposal system, hazardous waste and underground storage tanks on the Property unless disclosed in an addendum prepared by DONOR and attached hereto and incorporated herein by this reference.

- B. CITY may at its expense, at any time prior to closing, obtain a report from a qualified engineer or other person qualified to analyze the existence or nature of any hazardous materials, substances, conditions or wastes located on the Property. In the event any hazardous materials, substances, conditions or wastes are discovered on the Property, CITY'S obligation hereunder shall be contingent upon the removal of such materials, substances, conditions or wastes or other resolution of the matter reasonably satisfactory to CITY. However, in the event DONOR is required to expend any sum to remove any hazardous materials, substances, conditions or wastes, DONOR shall have the option to cancel this transaction and declare this Agreement null and void. The expense of any inspection shall be paid by CITY. The expense of any action necessary to remove or otherwise make safe any hazardous material, substances, conditions or waste shall be paid by DONOR, subject to DONOR'S right to cancel this transaction as provided above.

9. **DEED.** Upon satisfaction of all obligations and contingences required pursuant to this Agreement, DONOR shall convey the Property to CITY by Warranty Deed, free and clear of all liens, restrictions, and encumbrances, except as provided in this Agreement. General warranties of the title shall extend to the time of delivery of the Deed excepting liens and encumbrances suffered or permitted by CITY.

10. **STATEMENT AS TO LIENS.** DONOR shall be and is responsible for satisfying any and all liens upon the Property, including any mortgage(s) at or prior to closing. CITY shall not be required to complete acceptance of the Property, as otherwise contemplated by this Agreement, absent the satisfaction of such liens.

11. **NOTICE.** Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery or mailed by certified mail, addressed to the parties at the addresses given below.

12. **GENERAL PROVISIONS.** In the performance of each part of this Agreement, time shall be of the essence. Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement shall apply to and bind the successors in interest of the parties. This Agreement shall survive the closing. This Agreement contains the entire agreement of the parties and shall not be amended, except by a written instrument duly signed by DONOR and CITY. Paragraph headings are for convenience of

reference and shall not limit or affect the meaning of this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

**13. NO REAL ESTATE AGENT OR BROKER.** Neither party has used the service of a real estate agent or broker in connection with this transaction.

**14. CERTIFICATION.** CITY and DONOR each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly, on behalf of any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorneys' fees and costs) arising from or related to any breach of the foregoing certification.

**15. INSPECTION OF PRIVATE SEWAGE DISPOSAL SYSTEM.** DONOR represents and warrants to CITY that the Property is not served by a private sewage disposal system, and there are no known private sewage disposal systems on the property.

**16. COUNCIL APPROVAL.** In the performance of this Agreement, CITY, as a municipal corporation, shall take all action legally required of a municipal corporation relative to the purchase of real property including, but not limited to, considering required resolutions. This Agreement shall be expressly contingent upon approval by the City Council for Marshalltown, Iowa.

**17. COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which, when taken together, shall constitute the same instrument, even though all parties are not signatories to the original or the same counterpart. Furthermore, the parties may execute and deliver this Agreement by electronic means, such as PDF or a similar format. CITY and DONOR agree that delivery of the Agreement by electronic means shall have the same force and effect as delivery of original signatures and that each of the parties may use such electronic signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent as an original signature.

**18. EXECUTION.** When and if executed by both DONOR and CITY, this Agreement shall become a binding contract.

**DENNIS R. GRABENBAUER AND  
BARABARA K. GRABENBAUER**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
Dennis R. Grabenbauer

Address : 140 S 29th St.,  
Marshalltown, IA 50158

Telephone: \_\_\_\_\_

By: \_\_\_\_\_  
Barbara K. Grabenbauer

Address : 140 S 29th St.,  
Marshalltown, IA 50158

Telephone: \_\_\_\_\_

**CITY OF MARSHALLTOWN, IOWA,**  
an Iowa municipal corporation

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

By: \_\_\_\_\_  
Joel Greer, Mayor

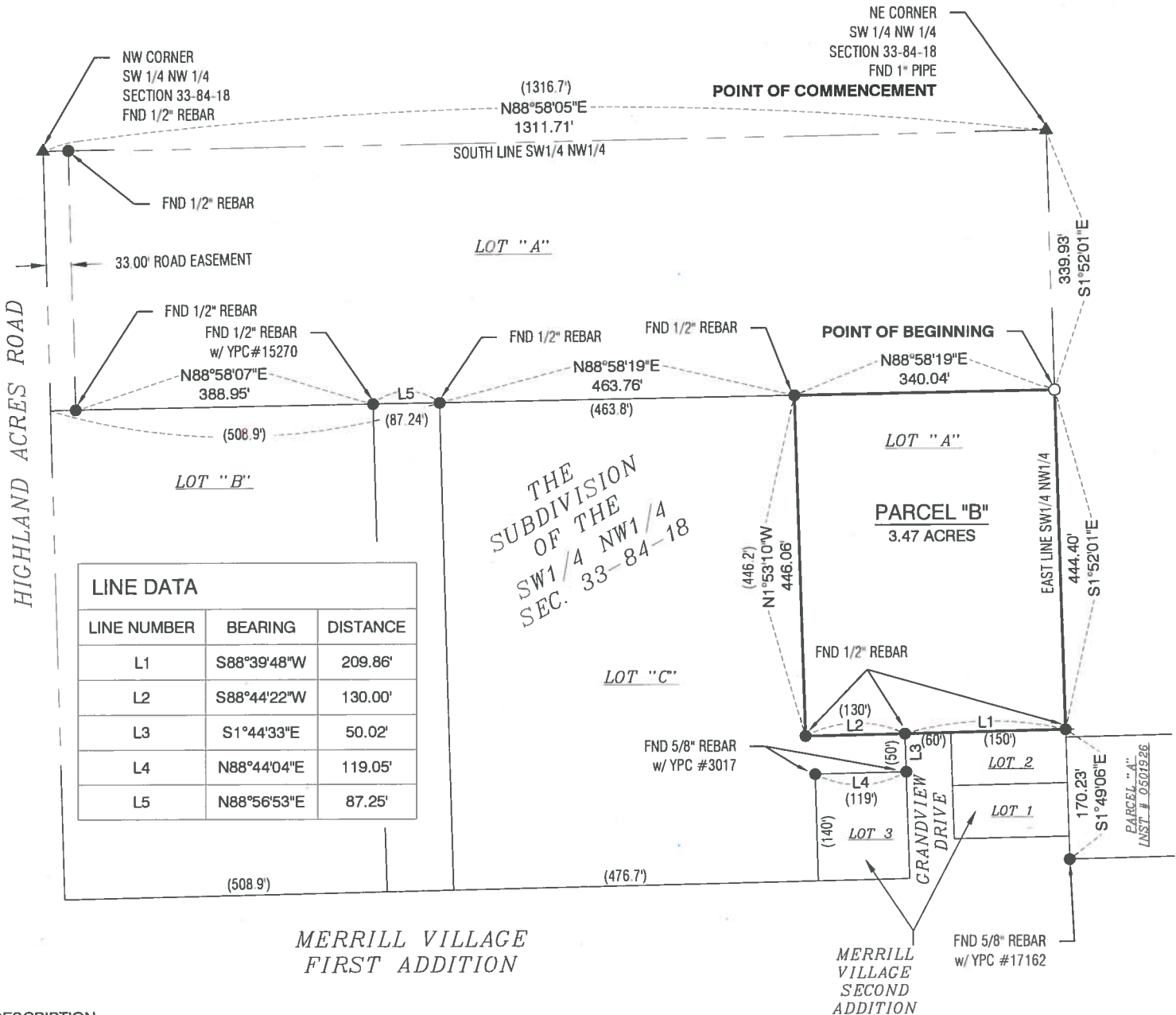
Address: 24 N Center St.,  
Marshalltown, IA 50158

Telephone: 641-754-5712

PLAT OF SURVEY

EXHIBIT A

INDEX LEGEND	
LOCATION:	PARCEL "B" LOCATED IN LOT "A" IN THE SUB'D OF THE SW1/4 OF THE NW1/4 OF SECTION 33-84-18, MARSHALL COUNTY, IOWA
PROPRIETOR:	DENNIS R GRABENBAUER AND BARBARA K GRABENBAUER
SURVEY REQUESTED BY:	ANNE SELNESS, CITY OF MARSHALLTOWN
FIELD WORK COMPLETED:	5/16/2018
SURVEY PREPARED BY:	CLAPSADDLE-GARBER ASSOCIATES, INC,
RESPOND TO:	16 EAST MAIN STREET, P.O. BOX 754,
TRAVIS STEWART	MARSHALLTOWN, IOWA 50158
	PHONE 641-752-6701
	TSTEWART@CGACONSULTANTS.COM



DESCRIPTION

PARCEL "B" LOCATED ENTIRELY WITHIN LOT "A" OF THE SUBDIVISION OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 84 NORTH, RANGE 18 WEST OF THE 5th P.M., MARSHALL COUNTY, IOWA. MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT "A", ALSO BEING THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 33; THENCE, S1°52'01"E 339.93' ALONG THE EAST LINE OF SAID LOT "A" TO THE POINT OF BEGINNING; THENCE, CONTINUING S1°52'01"E 444.40' ALONG SAID EAST LINE TO THE SOUTHEAST CORNER OF SAID LOT "A"; THENCE, S88°39'48"W 209.86' ALONG THE SOUTHERLY LINE OF SAID LOT "A"; THENCE, S88°44'22"W 130.00' ALONG SAID SOUTHERLY LINE TO A SOUTHWESTERLY CORNER OF SAID LOT "A"; THENCE, N1°53'10"W 446.06' ALONG THE WESTERLY LINE OF SAID LOT "A" TO A CORNER ON THE SOUTHERLY LINE OF SAID LOT "A", ALSO BEING THE NORTHEAST CORNER OF LOT "C" IN SAID SUBDIVISION; THENCE, N88°58'19"E 340.04' TO THE POINT OF BEGINNING, CONTAINING 3.47 ACRES. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

LEGEND:

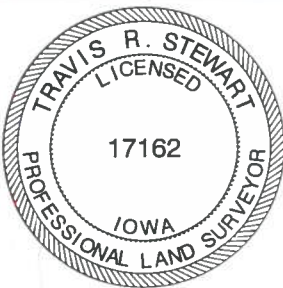
- ▲ GOVERNMENT CORNER MONUMENT FOUND
- △ GOVERNMENT CORNER MONUMENT SET 1/2" x 30" REBAR w/ORANGE PLASTIC ID CAP #17162
- PARCEL OR LOT CORNER MONUMENT FOUND
- SET 1/2" x 30" REBAR w/ORANGE PLASTIC ID CAP #17162
- ( ) RECORDED AS

NOTE:

ALL BEARINGS ARE THE RESULT OF G.P.S. OBSERVATIONS.

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SCALE 1"=200'



GRABENBAUER SURVEY  
MARSHALL COUNTY

I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly Licensed Professional Land Surveyor under the laws of the State of Iowa.

Travis R. Stewart, PLS  
Iowa License Number 17162  
My License Renewal Date is December 31, 2019  
Pages or sheets covered by this seal: THIS SHEET



Clapsaddle-Garber Associates, Inc  
16 East Main Street  
Marshalltown, Iowa 50158  
Ph 641-752-6701  
www.cgaconsultants.com

DRAWN CAQ	SHEET NO. 1
DATE 5-25-2018	PROJECT NO. 77860.05