

RESOLUTION 2024-115

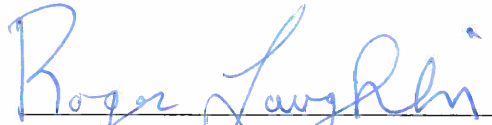
**RESOLUTION APPROVING THOSE CERTAIN EASEMENT AGREEMENTS
FOR HERITAGE HILL SUBDIVISION, WEST BRANCH, IOWA.**

WHEREAS, BBCO, LLC, the owner of Heritage Hill, West Branch, Iowa, has submitted proposed water main and permanent trail easements as part of the Heritage Hill Subdivision; and

WHEREAS, said easement agreements require approval of the City Council.

NOW, THEREFORE, It Is Resolved by the Council of the City of West Branch, Iowa, that the aforementioned easement agreements with BBCO, LLC, are hereby accepted and approved and the Mayor is hereby directed to execute said easements on behalf of the City.

Passed and approved this 21st day of October, 2024.



Roger Laughlin, Mayor

ATTEST:



Leslie Brick, City Clerk

Prepared by: James D. Houghton, 568 Highway 1 West, Iowa City, IA 52246 ~ (319) 351-8600
Return to: James D. Houghton, Anderson & Houghton, L.L.P., 568 Highway 1 West, Iowa City, IA 52246

WATER MAIN EASEMENT AGREEMENT
HERITAGE HILL SUBDIVISION – PART TWO
WEST BRANCH, CEDAR COUNTY, IOWA

RE: Lot 1 of Heritage Hill Subdivision to West Branch, Iowa, in accordance with the Plat thereof Recorded in Book 1726 at Pages 275-292 of the Records of the Cedar County Recorder's Office.

AND

Auditor's Parcel "O" located in West Branch, Iowa, in accordance with the Plat thereof Recorded in Book "L" at Page 159 of the Records of the Cedar County Recorder's Office.

Said resultant tract contains 5.90 Acres and is subject to easements and restrictions of record.

THIS AGREEMENT, made by and between **BBCO, LLC**, an Iowa limited liability company, hereinafter called "DEVELOPER", and the **City of West Branch, Iowa**, a municipal corporation, hereinafter called the "CITY", which expression shall include its successors in interest and assigns.

WITNESSETH:

It is hereby agreed as follows:

For the sum of \$1.00 plus other valuable consideration, the receipt of which is hereby acknowledged, DEVELOPER, as owner of the above described real estate, hereby grants and conveys to the CITY an easement for the purpose excavating for and the installation, replacement, maintenance and use of such water line, pipes, mains and conduits as the CITY shall from time to time elect for conveying water, with all necessary appliances and fittings for

the use in connection with said pipe lines, together with adequate protection therefor, and also a right of way, with the right of ingress and egress thereto, over and across the area designated as "15 Foot Water Main Easement" as shown on the Final Plat of Heritage Hill Subdivision – Part Two and referred to herein as "easement areas".

DEVELOPER further grants to the CITY:

1. The right of grading said easement area for the full width thereof, and to extend the cuts and fills for such grading into and onto said lands along and outside of the said easements area, to such extent as the CITY may find reasonably necessary. Any grading into and onto said lands along and outside the easement area shall be done in a manner that will not unreasonably interfere with DEVELOPER's use of its property outside the easement area.

2. The right from time to time to trim, to cut down and clear away any and all trees and brush on said easement area, and also to trim, cut down and clear away any trees on either side of said easement area which now or hereafter in the opinion of the CITY may be a hazard to said easement areas or which may interfere with the exercise of the CITY's rights hereunder in any manner.

3. The CITY shall promptly backfill any trench made by it, and repair any damages caused by the CITY and restore the area to its condition prior. The CITY shall indemnify DEVELOPER against liability, unreasonable loss or damage which may occur in the negligent exercise of the easement rights by the CITY or by its agents or employees in the course of their employment. Except as expressly provided herein, the CITY shall have no responsibility for maintaining the easement area.

4. DEVELOPER reserve the right to use said easement areas for purposes which will not interfere with the CITY's full enjoyment of the rights hereby granted; provided that the DEVELOPER shall not erect or construct any building, fence, retaining wall, or other structure, plant any trees, drill or operate any well, or construct any reservoir or other obstruction on said area, or diminish or substantially add to the ground cover over said easement areas. Any such improvement installed within the easement area, with or without CITY approval, may be removed by the CITY without compensation or replacement. DEVELOPER specifically reserves the right to cantilever structures over and across the easement areas.

5. DEVELOPER does hereby covenant with the CITY that it is lawfully seized and possessed of the real estate above described, and that they have a good and lawful right to convey it, or any part thereof.

6. Nothing in this Agreement shall be construed to impose a requirement on the CITY to install the original public improvement(s) at issue herein. Nor shall DEVELOPER be deemed acting as the CITY's agent during the original construction and installation of said improvement. Parties agree that the obligation to install the public improvement(s) herein shall be in accordance with CITY specifications, and the obligation shall remain on DEVELOPER until completion by DEVELOPER, and until acceptance by the CITY, as provided by law.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land and with the title to the land.

Dated this 3rd day of October, 2024

**DEVELOPER:
BBCO, LLC**

By: [Signature]
Robert B. Thomas, Member/Manager

CITY OF WEST BRANCH, IOWA:

By: [Signature]
Roger Laughlin, Mayor

ATTEST:

By: [Signature]
Barry J. Frantz, Member/Manager

By: [Signature]
Name: Leslie Brick
Title: City Clerk

STATE OF IOWA, COUNTY OF JOHNSON, ss:

This instrument was acknowledged before me on this 3rd day of October, 2024, by Robert B. Thomas as Member/Manager of BBCO, LLC.



[Signature]
Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF JOHNSON, ss:

This instrument was acknowledged before me on this 4th day of October, 2024, by Barry J. Frantz as Member/Manager of BBCO, LLC.



[Signature]
Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF Cedar, ss:

This instrument was acknowledged before me on this 22 day of October, 2024, by Roger Laughlin and Leslie Brick as Mayor and City Clerk, respectively, of the City of West Branch, Iowa.



J. Brown
Notary Public in and for the State of Iowa

Prepared by: James D. Houghton, 568 Highway 1 West, Iowa City, IA 52246 ~ (319) 351-8600
Return to: James D. Houghton, Anderson & Houghton, L.L.P., 568 Highway 1 West, Iowa City, IA 52246

PERMANENT TRAIL EASEMENT AGREEMENT

**HERITAGE HILL SUBDIVISION – PART TWO
WEST BRANCH, CEDAR COUNTY, IOWA**

RE: Lot 1 of Heritage Hill Subdivision to West Branch, Iowa, in accordance with the Plat thereof Recorded in Book 1726 at Pages 275-292 of the Records of the Cedar County Recorder's Office.

AND

Auditor's Parcel "O" located in West Branch, Iowa, in accordance with the Plat thereof Recorded in Book "L" at Page 159 of the Records of the Cedar County Recorder's Office.

Said resultant tract contains 5.90 Acres and is subject to easements and restrictions of record.

This AGREEMENT is made and entered into by **BBCO, LLC**, an Iowa limited liability company, hereinafter referred to as “DEVELOPER,” and the **City of West Branch, Iowa**, a municipal corporation, hereinafter referred to as “CITY.”

FOR THE PARTIES’ JOINT AND MUTUAL CONSIDERATION IT IS HEREBY AGREED AS FOLLOWS:

1. That undersigned DEVELOPER states that DEVELOPER is the lawful possessor of certain real estate described above and by this made a part hereof, and that said possession is not subject to any other third-party possessory or proprietary interests.
2. That DEVELOPER hereby grants and conveys to the CITY an exclusive **perpetual easement** for the purposes of operating, maintaining, using and reconstructing trail improvements (the “Trail Installation”) in the easement area as shown on the Final Plat of said Subdivision.

3. That DEVELOPER hereby covenants that DEVELOPER is lawfully seized and possessed, and is the owner of real estate described above, and that DEVELOPER has a good and lawful right to convey this easement.

4. That CITY shall have the right to make excavations and to grade as it may find reasonably necessary for the operation, repair, maintenance and reconstruction of the Trail Installation in the easement area; provided, however, the CITY must leave and return the easement area in essentially the same condition as prior to the construction.

5. That CITY shall have the right to trim and remove all trees and bushes which may interfere with the exercise of the CITY's rights pursuant to this easement.

6. That CITY shall have the right of ingress and egress to and from the easement area by such route as shall occasion the least practical damage and inconvenience to DEVELOPER.

7. That DEVELOPER reserves the right to use the above-described real estate for purposes which shall not interfere with the CITY's or public's full enjoyment of rights granted in the easement; provided, however, that DEVELOPER shall not erect or construct any building or structure, or drill or operate any well, or construct any reservoir or other obstructions within the easement, nor shall DEVELOPER allow or cause any substantial fill or cut over said easement without the consent of CITY, which consent shall not be unreasonably withheld.

8. That CITY agrees to promptly repair any damages within the areas subject to the easement, with the intent being to restore the surface of said areas to as close to original condition as is reasonably practicable, given the perpetual sanitary sewer easement.

9. That CITY shall indemnify DEVELOPER against any loss or damage which may occur in the exercise of the easement rights granted hereunder by the CITY.

10. That DEVELOPER reserves the right to assign this Agreement, along with all rights, obligations, and liabilities associated with said Agreement to an Owner's Association.

11. That provisions hereof inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land. This Agreement shall be recorded at the time of its execution with the understanding that CITY has complete and absolute sole ownership, use and control of the Trail Installation to be located in the Perpetual Easement Area.

12. That this written Permanent Trail Easement Agreement constitutes the entire agreement between DEVELOPER and CITY and there is no agreement to do or not to do any act or deed except as specifically provided herein.

-SIGNATURE PAGE TO FOLLOW-

Dated this 3rd day of October, 2024.

**DEVELOPER:
BBCO, LLC**

By: [Signature]
Robert B. Thomas, Member/Manager

CITY OF WEST BRANCH, IOWA:

By: [Signature]
Roger Laughlin, Mayor

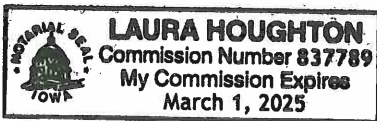
ATTEST:

By: [Signature]
Barry J. Frantz, Member/Manager

By: [Signature]
Name: Leslie Brick
Title: City Clerk

STATE OF IOWA, COUNTY OF JOHNSON, ss:

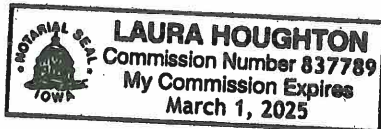
This instrument was acknowledged before me on this 3rd day of October, 2024, by Robert B. Thomas as Member/Manager of BBCO, LLC.



[Signature]
Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF JOHNSON, ss:

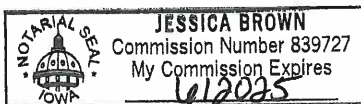
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[Signature]
Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF Cedar, ss:

This instrument was acknowledged before me on this 22 day of October, 2024, by Roger Laughlin and Leslie Brick as Mayor and City Clerk, respectively, of the City of West Branch, Iowa.



[Signature]
Notary Public in and for the State of Iowa