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Lloyd J. Dowding

REGISTER OF DEEDS



**THIS PAGE ADDED
FOR RECORDING
INFORMATION.**

**DOCUMENT STARTS ON
NEXT PAGE.**

LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS

Steven J. Stastny, Deputy

1210 GOLDEN GATE DRIVE, STE 1109

PAPILLION, NE 68046-2895

402-593-5773

**FIRST AMENDMENT TO ACCESS AND UTILITY EASEMENT
AGREEMENT**

THIS FIRST AMENDMENT TO ACCESS AND UTILITY EASEMENT AGREEMENT (this "Amendment") is entered into effective as of the 27th day of July, 2017, by **Kage Investments, LLC**, a Nebraska limited liability company ("**Kage**"), **15th & Cornhusker, LLC**, a Nebraska limited liability company ("**Cornhusker**"), **Bargstadt Properties, LLC**, a Nebraska limited liability company ("**Bargstadt**"), **Viking Partners Wolf Creek, LLC**, an Ohio limited liability company ("**Viking**") and **CM Capital Fairfield, LLC**, an Ohio limited liability company ("**CM**", which together with Viking as tenants-in-common, collectively referred to as "**Wolf Creek**") (individually each of the foregoing is an "**Owner**" and collectively, the "**Owners**").

1. RECITALS.

a. Kage is the owner of the improved real property legally described on Exhibit "A" and identified therein as Lot 1 ("**Lot 1**");

b. Cornhusker is the owner of the improved real property legally described on Exhibit "A" and identified therein as Lot 2 ("**Lot 2**"), and is also the owner of the improved real property legally described on Exhibit "A" and identified therein as Lot 3 ("**Lot 3**");

c. Bargstadt is the owner of the improved real property legally described on Exhibit "A" and identified therein as Lot 4 ("**Lot 4**"), and is the owner of the improved real property legally described on Exhibit "A" and identified therein as Lot 5 ("**Lot 5**", which together with Lot 4 is collectively referred to as "**Lot 4 & 5**");

d. Wolf Creek is the owner of the improved real property legally described on Exhibit "A" and identified therein as Lot 6 ("**Lot 6**") (Lots 1 – 6 hereafter individually a "**Lot**" and collectively the "**Lots**"), which Lots are depicted on the plat attached hereto as Exhibit B (the "**Site Plan**").

e. The Lots are subject to (1) an existing Access and Utility Easement dated September 11, 2000, recorded on December 22, 2000 as instrument number 2000-33957 in the Sarpy County, Nebraska, Register of Deeds (the "**2000 Easement**") and (2) an Access and Utility Easement as shown on the final plat of Wolf Creek recorded in Sarpy County, Nebraska as instrument number 97-28695 (the "**1997 Easement**") (collectively, the "**Easement Agreement**"). The Easement Agreement establishes certain ingress and egress easements.

f. The Owners desire to enter into this Amendment to provide for certain cost allocation and payment for the pedestrian and vehicular ingress and egress easement areas referred to in the 1997 Easement and in Section 1 of the 2000 Easement Agreement, which the parties hereto agree is the existing, as built drive commonly known as Wolf Creek Drive and depicted in black on the Site Plan (the "**Ingress/Egress Easement Area**").

g. All Exhibits referred to herein are incorporated into this Amendment by reference.

2. **MAINTENANCE AND EXPENSES.**

a. **Maintenance.** The Owner of Lot 6 (also referred to herein as the “**Manager**”) shall, as commercially reasonable, to the extent maintenance or repair of the Ingress/Egress Easement Area is not otherwise provided by a governmental entity or agency, maintain in good condition and repair, the Ingress/Egress Easement Area, including, without limitation, landscaped areas, signage, lighting facilities, walkways, streets, driveways, fencing, and other related facilities available for joint use. Manager shall periodically resurface the paved portions of the Ingress/Egress Easement Area with a good quality surfacing material upon the written consent of Owners whose percentages listed in Section 2(c) hereof exceed eighty percent (80%). Manager shall keep the Ingress/Egress Easement Area free of all ice, snow, debris and refuse so as to keep the Ingress/Egress Easement Area in a clean and orderly condition to the extent such maintenance services are not provided by a governmental entity or agency. Upon the written consent of Owners whose percentages listed in Section 2(c) exceed eighty percent (80%), Manager shall have the right to change the areas, level, location and arrangement of the Ingress/Egress Easement Area; provided that such changes do not materially or adversely restrict or reduce visibility of the improvements on any Lot, access to the improvements on any such Lot and to establish, monitor and enforce reasonable rules and regulations with respect to the Ingress/Egress Easement Area and the use to be made thereof.

b. **Disruption.** All Ingress/Egress Easement Area management, operation, maintenance and repair shall be performed by Manager in accordance with all applicable laws and regulations and in manner which will cause as little disruption to and interference with the use of the remainder of the Ingress/Egress Easement Area and the Lots or the improvements thereon as is reasonably practical.

c. **Expenses.**

i. Within thirty (30) days of Owner's receipt of a written itemization of the Ingress/Egress Area maintenance expenses (the “Easement Charges”) for the preceding month, together with copies of invoices for all such charges and evidence of payment thereof, each Owner shall pay to Manager monthly, without deduction, setoff or demand, such Owner's or Permittee's pro rata share of the Easement Charges, which shall be as follows: Lot 1 – 6.88%, Lot 2 6.69%, Lot 3 – 5.46%; Lot 4 & 5 (combined) – 9.12% and Lot 6 – 71.86%. Notwithstanding the foregoing: (A) the Easement Charges to be paid by the record Owner of Lot 1 shall be capped at \$350.00 per calendar year; and (B) the Easement Charges to be paid by the record Owner of Lot 4 & 5 shall be capped at \$450.00 per calendar year (the “**Lot 4 and 5 Cap**”), with such Easement Charge payments to commence, and shall relate only to Easement Charges incurred after, January 1, 2018. Absent a written and duly recorded instrument to the contrary, the Owner of Lot 2 and the Owner of Lot 3 shall pay, in equal shares, the Easement Charges attributable to Lot 4 & 5 in excess of the Lot 4 and 5 Cap, up to

\$163.95 per calendar year (the "**Excess Cap**"); provided, however, that the Excess Cap shall increase by the increase in the consumer price index-all urban consumers each year.

ii. Easement Charges shall include the reasonable costs and expenses incurred by Manager and/or by agents employed or engaged by Manager to operate, maintain, manage and repair (and in certain instances replacement costs) the Ingress/Egress Easement Area, including, without limitation, (i) striping, paving, lighting, sanitary control, removing and/or pushing snow, and removing trash, garbage and other refuse; (ii) constructing, maintaining, and repairing of on-site traffic controls; (iii) personnel (including payroll taxes, workmen's compensation insurance, unemployment insurance, health insurance and disability insurance), security, directing traffic and parking; (iv) administrative and overhead costs equal to five percent (5%) of the total Easement Charges; (v) installing, renting and maintaining signs; (vi) any necessary maintenance, repair and replacement of utility systems within the Ingress/Egress Easement Area in connection with any resurfacing or replacement of the paved Ingress/Egress Easement Area; and (vii) any other expenses reasonably incurred by the Manager in operating and maintaining the Ingress/Egress Easement Area.

d. Easement Charge Records. Upon written request of any party hereto, Manager shall provide a statement identifying the amount of Easement Charges paid by the requesting party during the calendar year in which the request is made.

3. **DEFAULT.** Should a party hereto breach any of its obligations hereunder and such breach continue for a period of ten (10) days after receipt of notice, Manager shall be entitled to all remedies at law or in equity, provided that no notice is required if the breach creates an emergency or interferes with use of a Lot in Manager's reasonable discretion. All expenses required to cure the breach shall be reimbursed by the defaulting party within ten (10) days after receipt of written evidence confirming the payment of such expenses. Any sums remaining unpaid in accordance with this Amendment together with interest calculated at the four percent (4%) in excess of the prime rate charged by US Bank, N.A., or any successor thereto, or at the highest annual interest rate allowed by law, whichever is less. In the event of litigation by reason of this Amendment, the prevailing party in such litigation shall be entitled to recover statutorily permitted interest and reasonable attorneys' fees in addition to all other expenses incurred by such litigation.

4. **MISCELLANEOUS.**

a. Recitals. The Recitals are incorporated into this Amendment.

b. No Dedication. The easements created in this Amendment shall remain private and shall not, in any event, be construed as a public dedication, unless unanimously agreed to by all of the Owners of the Lots.

c. Severability. If any one or more of the foregoing covenants, conditions or restrictions shall be declared to be null and void for any reason by the court of

competent jurisdiction, such judgment or decree shall not in any manner whatsoever affect any of the covenants, conditions or restrictions not so declared to be void, but all of the remaining covenants, conditions and restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

d. Indemnification. Each Owner and its respective heirs, successors, assigns, agents, tenants, licensees and invitees, are utilizing the easement rights granted herein at their sole risk. Each Owner agrees to indemnify, protect, defend and hold harmless the Manager and other Owners from and against any and all claims, causes of action, losses, liabilities and damages, and costs and expenses associated therewith (including reasonable attorney's fees), arising out of each Owner's use of the Ingress/Egress Easement Area.

e. Amendment. Except as amended by this Amendment, the Easement Agreement shall remain in full force and effect. Notwithstanding anything else contained in this Amendment to the contrary, this Amendment may be terminated or amended at any time, as to any or all of the covenants, conditions, or restrictions, upon the execution of a written instrument, by the Owners whose percentages exceed ninety percent (90%) all of the Lots. The instrument containing such termination or amendment shall be duly recorded.

f. Run with the Land. These covenants, conditions and restrictions shall be covenants running with the land and the breach thereof may be enjoined or remedied by appropriate proceedings at law or equity by Manager or by the Owner of a Lot, but by no other person. If Manager employs counsel to enforce any of the foregoing covenants, conditions or restrictions by reason of such breach, all costs incurred in such endorsement, including a reasonable fee for counsel, shall be paid by the Owner of such Lot or Lots.

g. No Waiver. No delay or omission on the part of Manager or the Owners of other Lots in exercising any rights, power or remedy, herein provided in the event of any breach of the covenants, conditions or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein.

h. No Partnership. This Amendment shall not create an association, partnership, joint venture or a principal and agency relationship between the parties hereto or their tenants or licensees.

i. Transfer. The parties acknowledge and agree that the obligations of each Owner under this Amendment shall cease and terminate with respect to prospective obligations of the parties hereunder upon the transfer of all of Owner's Lot; provided, however, that the rights and obligations set forth in this Amendment shall continue to apply to any transferee of such party, or any portion thereof.

j. Validity of Liens. Anything contained herein to the contrary notwithstanding, no breach or violation of this Amendment shall defeat, impair or render invalid the lien of any mortgage, deed of trust or similar instrument made in good faith

and for value encumbering the Property or any portion thereof or interest therein (a "Trust Deed"), and no portion of this Amendment shall supersede or in any way reduce the security or affect the validity of any such Trust Deed or the debt it secures. All of the provisions of this Amendment shall be binding upon and effective against any Owner or portion thereof whose title is acquired by purchase at private or judicial foreclosure or deed or assignment in lieu of foreclosure of any such Trust Deed

k. Counterparts. This Amendment may be executed in any number of counterpart originals, each of which, when taken together, shall be deemed to be one and the same instrument. Executed copies of this Amendment may be delivered between the parties via telecopy or electronic mail.

l. Entire Agreement. This Amendment contains the entire agreement between the parties and there are no other terms, expressed or implied, except as contained herein. Any statement, representation or promise made by either party or an agent or employee thereof which is not contained herein shall be null and void.

m. Estoppel Statements. Manager shall, within fifteen (15) days after request of an Owner or Permittee, furnish an estoppel statement specifying the nature of any known default of the requesting Owner.

**[Space Below Intentionally Left Blank –
Signature Page to Follow]**

COUNTERPART SIGNATURE PAGE TO
FIRST AMENDMENT TO EASEMENT AGREEMENT

IN WITNESS WHEREOF, each Owner has executed this Agreement as of the date first written above.

KAGE INVESTMENTS, LLC,
a Nebraska limited liability company

By: _____

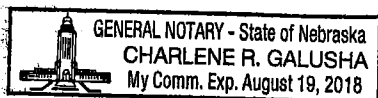
Printed Name: JERRY BANKS

Title: President

Date: July 24, 2017

STATE OF NEBRASKA)
) SS:
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 24th day of July, 2017, by Jerry Banks, President, of Kage Investments, LLC, a Nebraska limited liability company, on behalf of the company.



Notary Public

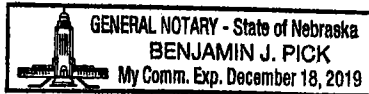
15TH & CORNHUSKER, LLC,
a Nebraska limited liability company


By: 
Kyle E. Richards, Manager

Date: 7-24-17

STATE OF NEBRASKA)
) SS:
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 24th day of July, 2017, by Kyle E. Richards, Manager of 15th & Cornhusker, LLC, a Nebraska limited liability company, on behalf of the company.




Notary Public

**VIKING PARTNERS WOLF CREEK, LLC, an
Ohio limited liability company**

By: Viking Partners Management, Inc.,
Its Sole Manager

By: Bret A. Caller
Printed Name: BRET A. CALLER

Title: ~~MANAGER~~ CEO
Date: 7-26-17

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 26 day of July, 2017, by BRET A. CALLER, the CEO of Viking Partners Management, Inc., the sole manager of Viking Partners Wolf Creek, LLC, an Ohio limited liability company, on behalf of such limited liability company.



RYAN LUCAS
Notary Public, State of Ohio
My Commission Expires 04-20-2021

[Signature]
Notary Public

CM Capital Fairfield, LLC, an Ohio limited liability company

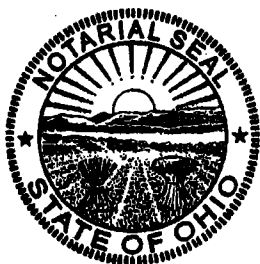
By: Viking Partners Management, Inc.,
Its Sole Manager

By: Brett A. Caller
Printed Name: BRETT A. CALLER

Title: CEO
Date: 7-26-17

STATE OF OHIO)
COUNTY OF HAMILTON) SS:

The foregoing instrument was acknowledged before me this 26 day of July, 2017, by BRETT A. CALLER, the CEO of Viking Partners Management, Inc., the sole manager of CM Capital Fairfield, LLC, an Ohio limited liability company, on behalf of such limited liability company.



RYAN LUCAS
Notary Public, State of Ohio
My Commission Expires 04-20-2021

Bh
Notary Public

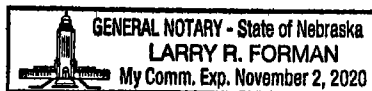
Counterpart signature page to First Amendment to Easement Agreement among owners of Lots 1 through 6 inclusive, Wolf Creek Replat 1, an Addition to the City of Bellevue, in Sarpy County, Nebraska

BARGSTADT PROPERTIES, LLC, a
Nebraska limited liability company

By: Roger Bargstadt
Name: ROGER BARGSTADT
Title: Member BARGSTADT Properties
Date: 11/30/17

STATE OF NEBRASKA)
) SS:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30 day of Nov., 2017, by ROGER BARGSTADT A MEMBER of Bargstadt Properties, LLC, a Nebraska limited liability company, on behalf of the company.



[Signature]
Notary Public

Exhibit "A"
Legal Description

Lot 1:

Lot 1 Wolf Creek Replat 1, an addition to the City of Bellevue, in Sarpy County, Nebraska.

Lot 2:

Lot 2 Wolf Creek Replat 1, an addition to the City of Bellevue, in Sarpy County, Nebraska.

Lot 3:

Lot 3 Wolf Creek Replat 1, an addition to the City of Bellevue, in Sarpy County, Nebraska.

Lot 4:

Lot 4 Wolf Creek Replat 1, an addition to the City of Bellevue, in Sarpy County, Nebraska.

Lot 5:

Lot 5 Wolf Creek Replat 1, an addition to the City of Bellevue, in Sarpy County, Nebraska

Lot 6:

Lot 6 Wolf Creek Replat 1, an addition to the City of Bellevue, in Sarpy County, Nebraska

Exhibit "B"
Site Plan

(see attached)

