



MISC 2006128753



NOV 09 2006 14:07 P 6

misc 39-09875  
 FEE 42.00 39-01042  
 6 BK C/O COMP *[initials]*  
 24 SCAN FV

*[Handwritten mark]*

Received - DIANE L. BATTIATI  
 Register of Deeds, Douglas County, NE  
 11/9/2006 14:07:30.90



2006128753

**DECLARATION OF EASEMENTS**

KNOWN BY ALL MEN THESE PRESENTS:

THIS DECLARATION OF EASEMENTS ("Declaration") is made this 3<sup>rd</sup> day of November 2006, by Dundee Place Condominium Homeowners Association, Inc., a Nebraska non-profit corporation ("Dundee Place Owners"), Fountainhead Development, LLC, a Nebraska limited liability company ("Fountainhead"), The Arlington at Dundee Property Owners Association, Inc., a Nebraska non-profit corporation (the "Arlington Owners"), and Arlington, LLC, a Nebraska limited liability company.

**PRELIMINARY STATEMENTS**

A. Fountainhead is the owner of certain real estate formerly legally described as Lots 1 and 2, block 115, Dundee Place, a subdivision of Douglas County, Nebraska, and now known as Units 2A, 2B, 2C, 2D, 3A, 3B, 3C, 4A, 4B, 4C, Dundee Place Condominiums, pursuant to the Declaration of Condominium for Dundee Place Condominiums dated November 14, 2005, and filed November 16, 2005, at Instrument No. 2005145444 of the Records of Douglas County, Nebraska and an Amendment to Declaration dated October 10, 2006 and filed on October 12, 2006 with the Register of Deeds of Douglas County, Nebraska at Instrument No. 2006117517 (hereinafter the "Dundee Place Property"); and

B. Dundee Place Owners is the non-profit corporation formed, or to be formed, in accordance with the Nebraska Revised Statutes, to govern, manage and maintain the property and improvements on or about the Dundee Place Property;

C. Arlington, LLC is the owner of certain real estate formerly legally described as Lots 3 and 4, block 115, Dundee Place, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska currently known as Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, The Arlington at Dundee Condominium Regime, pursuant to the Declaration and Master Deed of The Arlington at Dundee Condominium Regime dated July 28, 2006, and filed July 31, 2006 at Instrument No. 2006085720 of the Records of Douglas County, Nebraska (hereinafter the "Arlington Property");

D. Arlington Owners is the non-profit corporation formed, or to be formed, in accordance with the Nebraska Revised Statutes, to govern, manage and maintain the property and improvements on or about the Arlington Property;

E. Fountainhead and Dundee Place Owners desire to provide a certain driveway easement over and across a portion of the Dundee Place Property, as shown in Exhibit "A", to the Arlington Owners; such easement being for the benefit of the Arlington Owners, the Arlington Property and the future owners, mortgagees, tenants and other occupants of the Arlington Property, their respective invitees, successors, assigns, and others as specifically set forth below; and

When recorded return to:  
 Fountainhead Development, LLC  
 809 North 96<sup>th</sup> St.  
 Omaha Nebraska 68114

42  
 5  
 01-006929

F. Arlington and Arlington Owners desire to provide certain drainage and access easements over and across a portion of the Arlington Property, to the Dundee Place Owners; such easement being for the benefit of the Dundee Place Owners, the Dundee Place Property and the future owners, mortgagees, tenants and other occupants of the Dundee Place Property, their respective invitees, successors, assigns, and others as specifically set forth below.

DECLARATION OF EASEMENTS

1. Ingress and Egress Easement, Driveway Easement

a. The Dundee Place Owners hereby declare and grant for the benefit of the Arlington Owners, their mortgagees, successors, assigns and Authorized Users (as hereinafter defined) of the Arlington Property, a non-exclusive appurtenant easement for purposes of vehicular and pedestrian ingress and egress to, from, over and across the portion of the Dundee Property described on Exhibit "A" attached hereto and incorporated herein by this reference, which is 1.5 feet wide at the Northernmost point of the West side of the Dundee Property and widens to 2 feet wide at a point 116.3 feet South from the Northern boundary of the Dundee Place Property (the "Driveway Easement").

b. The Dundee Place Owners do hereby declare and grant for the benefit of the Arlington Owners, their mortgagees, successors, assigns and Authorized Users of the Property, a non-exclusive appurtenant easement for the purpose of the right and privilege to extend their driveway onto the Driveway Easement, for vehicular ingress and egress to, from, over and across the designated portion of the Dundee Place Property.

c. Fountainhead hereby acknowledges, ratifies, consents and agrees to the easements granted in Section 1 of this Declaration.

2. Drainage Easement; Access and Maintenance Easement.

a. The Arlington Owners hereby declare and grant for the benefit of the Dundee Place Owners, their mortgagees, successors, assigns and Authorized Users of the Dundee Place Property, a non-exclusive appurtenant easement to drain water from the Dundee Place Property onto and across the Arlington Property including, but not limited to, across the Arlington Property driveway.

b. The Arlington Owners hereby declare and grant for the benefit of the Dundee Place Owners, their mortgagees, successors, assigns and Authorized Users of the Dundee Place Property, a non-exclusive appurtenant easement for purposes of vehicular and pedestrian ingress and egress to, from, over and across the Arlington Property driveway for purposes of performing maintenance, repairs, improvements and/or deliveries to the Dundee Place Property, provided however that this easement may not be used for ingress and egress of heavy construction equipment without the consent of the Arlington Owners.

c. Arlington, LLC hereby acknowledges, ratifies, consents and agrees to the easements granted in Section 2 of this Declaration.

3. Authorized Users Defined. As used in this Declaration, Authorized Users refers to the owners, tenants and other occupants of the relevant Property (either the Dundee Place Property or the Arlington Property), and their respective guests, licensees and invitees.

4. Alterations and Improvements. The grantor of the relevant easement(s) set forth herein, their successors or assigns, shall have the right to alter, maintain, repair, replace and/or improve the relevant

When recorded return to:  
Fountainhead Development, LLC  
809 North 96<sup>th</sup> St.  
Omaha, Nebraska 68114

property and/or the easement areas pursuant hereto without first obtaining prior written consent from the recipient of the relevant easement, so long as the alteration, maintenance, repair, replacement or improvement of the relevant Property and/or the easement area(s) does not unreasonably limit access and/or use of the relevant portion of the Property for use by the recipient of the relevant easement for the purposes described above. Without limiting the generality of the foregoing, and for illustration purposes, the Arlington Owners cannot improve their drive by placing a curb on the East side of same without written consent from the Dundee Place Owners because such improvement would unreasonably limit use of the drive by the Dundee Place Owners for drainage purposes.

Should prior written consent be necessary, such consent shall not be unreasonably withheld or delayed, and any denial of consent shall be delivered to the requesting party within seven (7) days of receipt of written request for approval, and be accompanied by an explanation of the reason(s) for such denial.

5. Maintenance. The responsibility, duties and costs for the maintenance of the relevant Property and/or the easement areas as described in this Declaration shall be allocated as follows:

- a) All costs for the maintenance, repairs, replacement and upkeep (including keeping the Driveway Easement Area clear of debris, snow, ice, leaves and the like and sanding/salting of same) of the paved or surfaced Driveway Easement area shall be the obligation of the Arlington Owners, or its successors or assigns, and the Arlington Owners shall maintain liability insurance covering the paved or surfaced Driveway Easement area at all time, with the Dundee Place Owners as an additional insured.
- b) All costs for the maintenance, repairs and upkeep of the Dundee Place Property excluding the paved or surfaced Driveway Easement area shall be the obligation of the Dundee Place Owners.
- c) All costs for the maintenance, repairs and upkeep of the Arlington Property shall be the obligation of the Arlington Owners.

6. Run With The Land. This Declaration and the easements granted herein, shall run with the land and shall be binding upon, and inure to the benefit of, the relevant recipient(s) and their successors and assigns, including, but not limited to, all subsequent owners of the relevant Dundee Place Property and the Arlington Property, or any portion thereof, and all other persons claiming by, through or under any of them.

7. Permanent. The easements granted in this Declaration shall continue in perpetuity from the date hereof.

8. No Additional Obligations. Except as expressly stated herein, the easements herein shall not create or place any additional obligations or liabilities on any grantor beyond such grantor's obligations and liabilities existing immediately prior to the execution hereof.

9. Enforcement. The provisions of this Declaration may be enforced by an action for injunctive relief as well as by an action for damages. No breach of any provision of this Declaration by any party who is bound by this Declaration shall give any other party the right to cancel, rescind, or otherwise terminate this Declaration, but the foregoing limitation shall not affect any other rights or remedies which such other party may have by reason of such breach.

10. No Dedication to the Public. Anything to the contrary in this Declaration notwithstanding, neither this Declaration nor any part thereof, shall be deemed a gift or dedication of any portion of the easement property to the general public, or for use by the general public or for any public purpose whatsoever, but

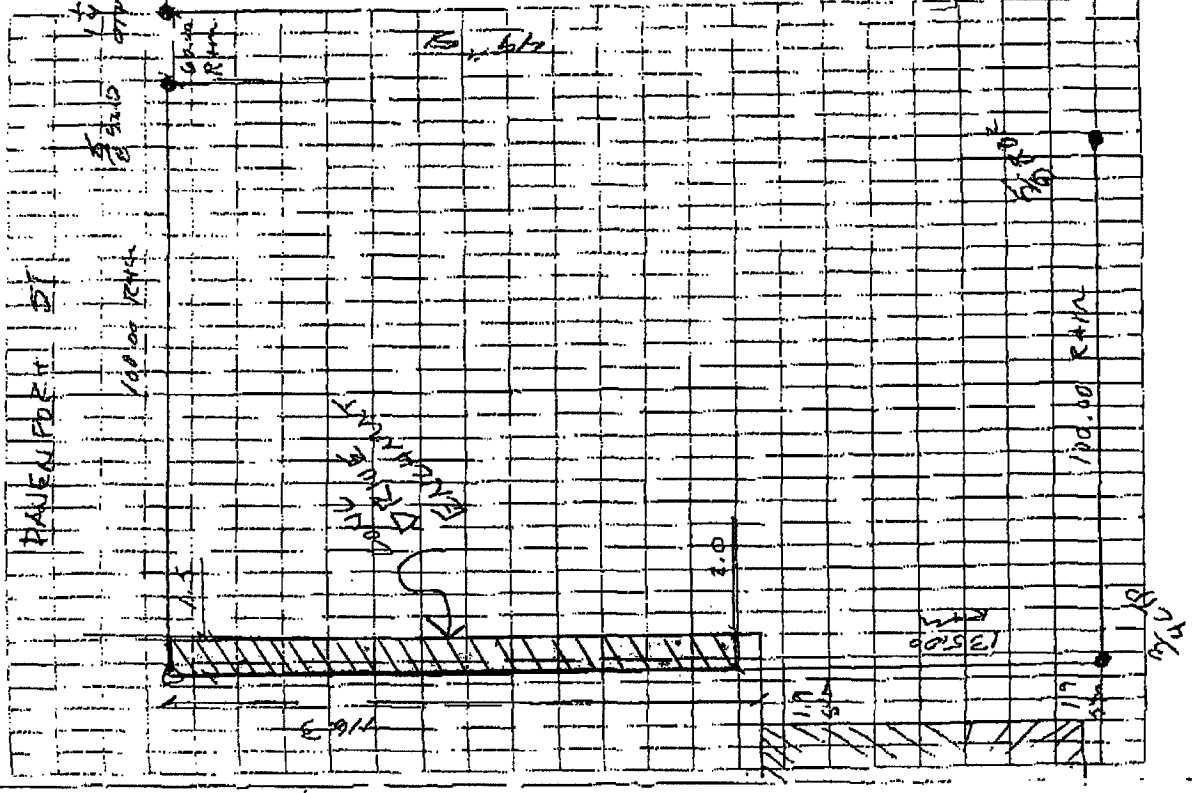
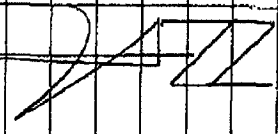




EXHIBIT "A"

1459-103 / FOUNTAIN BEAD  
 W. GREEN  
 B. HAHN  
 224 No 49<sup>th</sup> ST.  
 LOTS 1 & 2  
 BLOCK 15  
 DUNDIE PLACE, D.C.

• - CORNERS FOUND



NW corner of 612<sup>nd</sup> - 1' 8"