



MISC 2014032394



MAY 02 2014 15:37 P 10

Fee amount: 64.00
FB: 0c-28749
COMP: PN

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
05/02/2014 15:37:24.00



2014032394

[The Space Above is for Recording Data]

**RECIPROCAL PERMANENT ACCESS,
PARKING AND MAINTENANCE AGREEMENT**

THIS RECIPROCAL PERMANENT ACCESS, PARKING AND MAINTENANCE AGREEMENT is made as of this 30 day of APRIL 2014 by and among George W. Venteicher, a Nebraska resident and Frank H. Kulig, a Nebraska resident, as tenants in common (together, "Party 1"), and George W. Venteicher, a Nebraska resident ("Venteicher").

RECITALS:

WHEREAS, Party 1 is the lawful owner of the parcel of land legally described as follows:

Lot 1 and Lot 2, 180th Plaza Replat Four, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded (collectively, the "Party 1 Property");

WHEREAS, Venteicher is the lawful owner of a parcel of land legally described as follows:

Lot 3, 180th Plaza Replat Four, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded (the "Venteicher Property");

WHEREAS, by virtue of the recording of this Reciprocal Permanent Access, Parking and Maintenance Agreement (this "Agreement"), the above legally described real property (hereinafter referred to individually as a "Lot" and collectively as the "Lots") shall be owned, held, transferred, sold, conveyed, used, and occupied and mortgaged or otherwise encumbered subject to the provisions of this Agreement and every grantee of any interest in any said Lot, by acceptance of a deed or other conveyance of such interest, and every person or entity owning an interest in any Lot or portion of any Lot, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Agreement and shall be deemed to have consented to the terms hereof; and

WHEREAS, Party 1 and Venteicher (hereinafter referred to individually as a "Party" and collectively as the "Parties") desire to establish for each other's benefit and for the mutual benefit of all future owners of the Lots, a Lot or any portion thereof (hereinafter referred to individually as an "Owner" and collectively as the "Owners"), occupants, and mortgagees of the Lots or any part thereof and their respective officers, directors, members, partners, employees, tenants, agents, contractors, customers, invitees, licensees, vendors, subtenants or concessionaires ("Permittees"), fire, rescue and other emergency vehicles, ingress and egress, over and upon each of the Lots within the parking areas depicted on Exhibit A, which is attached hereto and incorporated herein by reference (the "Parking Area") for the purpose of providing pedestrian and vehicular ingress and egress to the Lots and the non-exclusive right to park private automotive vehicles within the Parking Area, and intends that all future Owners, occupants and mortgagees and any other persons hereafter acquiring any interest in any of the Lots shall hold said interest subject to certain rights, easements and privileges in, over and upon the Lots for the purpose of providing pedestrian and vehicular ingress and egress, to and from the foregoing described Lots.

NOW, THEREFORE, for and in consideration of One (\$1.00) Dollar, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby grant, convey, reserve and impose the following easements, covenants, conditions and restrictions against the Lots and such easements, covenants, conditions and restrictions shall be for the benefit or burden, as the case may be, of all future Owners, occupants, fire, rescue and other emergency vehicles and mortgagees of the Lots and their respective Permittees.

1. Permanent Access and Parking Easements. The Parties hereby grant and convey for the mutual benefit of each other and for the mutual benefit of all future Owners, and their respective Permittees, a perpetual non-exclusive easement and right for vehicular and pedestrian ingress and egress, in, over and upon the Parking Area now or hereafter constructed and located within the Parking Area set forth on Exhibit A attached hereto, for the purpose of providing pedestrian and vehicular access to the Lots as well as the non-exclusive right to park private automotive vehicles within the Parking Areas; provided, however, that the rights herein granted to any person or entity, or anyone claiming by, through or under them, shall terminate and expire at such time as such person or entity ceases to be an Owner, occupant or mortgagee of a Lot or Lots or any portion thereof, as the case may be, and such rights shall thereafter be held by the new Owner, occupant or mortgagee, or anyone claiming by, through or under them.

2. Pedestrian Ingress and Egress. The Parties hereby grant and convey for the mutual benefit of each other and for the mutual benefit of all future Owners, and their respective Permittees, an easement for a perpetual non-exclusive right of ingress and egress, over and upon the pedestrian sidewalk areas on each Lot, as the same may from time to time be designated, constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the sidewalk areas of each Lot, as the same may from time to time be designated, constructed and maintained for such use, and intends that all future Owners, occupants and mortgagees and any other persons hereafter acquiring any interest in any of the Lots shall hold said interest subject to certain rights, easements and privileges.

3. Reservations and Restrictions. The easement rights and privileges set forth in Section 1 and Section 2 hereof shall be subject to all of the following reservations and restrictions as well as the other applicable provisions contained in this Agreement:

- (A) Each Owner reserves the right to close-off any portion of its Lot for such reasonable period of time as may be legally necessary, in the opinion of such Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of its Lot, such Owner shall give written notice to each other Owner of its intention to do so, and shall attempt to coordinate such closing-off with each other Owner so that no unreasonable interference with the passage of pedestrians or vehicles shall occur.
- (B) Each Owner reserves the right at any time and from time to time to exclude and restrain any person or entity that is not a Permittee from using its Lot or any portion thereof.
- (C) Each Owner reserves the right to temporarily erect or place barriers in and around areas on its Lot which are being constructed and/or repaired in order to insure either safety of persons or protection of property.
- (D) Vehicles making deliveries to or pickups from an Owner's Lot shall not park on another Owner's Lot.

4. Standard of Maintenance of the Parking Area. The Parking Area shall be maintained, repaired, operated, replaced and otherwise kept in good repair which shall include, without limitation, the following:

- (A) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or better in quality, use and durability.
- (B) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition.
- (C) Inspecting, maintaining, repairing and replacing the lighting, if any, and painting and striping within the Parking Area.
- (D) Maintaining, mowing, weeding, thinning, trimming, watering, fertilizing, cultivating and pruning all landscaped areas within the Parking Area, including any adjacent public right-of-ways, to maintain the same in a neat, well-groomed condition, and replacing as necessary shrubs and other landscaping on a regular basis; dead or dying plants shall be removed and replaced within thirty (30) days,

weather permitting; all plants and trees are to be irrigated as often as necessary to maintain healthy growing conditions.

5. Responsibility for Maintenance and Operation of the Parking Area. Party 1 shall be responsible for all of the costs and expenses associated with the maintenance, repair and/or replacement of the Parking Area in accordance with Section 3 and Section 4 above until such time as the Venteicher Property is developed and improved with a building and related improvements, as evidenced by a certificate of occupancy issued by the City of Omaha. After such time, unless the Owners agree to the contrary, Party 1 shall periodically submit to Venteicher a statement of costs and expenses reasonably incurred by Party 1 for such maintenance, repair and/or approved replacement of the Parking Area, together with reasonably supporting documentation therefore. Venteicher shall, within thirty (30) days following the receipt of any reasonable written invoice from Party 1 for any such maintenance, repair and/or approved replacement, reimburse Party 1 for its Allocated Share (as defined below) of the reasonable cost of such maintenance, repair and/or approved replacement.

6. Allocated Share; Responsibility to Repair Own Lot. The Parties agree that the maintenance, repair and/or approved replacement costs associated with the Parking Area shall be allocated between the Parties as follows, which allocations (herein each referred to as an "Allocated Share") are based upon the proportion of the gross square footage of the building(s) on each Lot as of the date hereof:

<u>Lot:</u>	<u>Allocated Share:</u>
Owner of Lot 1, 180 th Plaza Replat Four (7,047 square feet):	30.59%
Owner of Lot 2, 180 th Plaza Replat Four (15,991 square feet):	69.41%
Owner of Lot 3, 180 th Plaza Replat Four (0 square feet):	0%

The Parties agree to enter into an amendment to this Agreement following the development and improvement of the Venteicher Property to set forth each Owner's revised Allocated Share following the completion of construction of the building and other improvements on the Venteicher Property. Except with respect to the Parking Area and related improvements and appurtenances, each Owner shall be responsible for the repair and maintenance of the Lot or portion thereof owned by it and all improvements located on such Lot or portion thereof. In addition, notwithstanding the foregoing and anything herein to the contrary, each owner shall defend, indemnify and save harmless from and against any and all liabilities, costs and damages (including, without limitation, reasonable attorneys' fees) arising out of, or in connection with such owner's operation, maintenance, repair or replacement of the Parking Area. Each party further agrees that any damage caused to the Parking Area by such party in its use, operation, maintenance, repair and/or replacement of the Parking Area or in the process of its exercising its rights granted herein, shall be repaired by responsible party at such party's sole cost and expense.

7. Barriers. Except as specifically set forth herein, no Owner or its Permittees shall unreasonably prevent, hinder or interfere in any way with the free passage of vehicular and pedestrian traffic to and from the Lots or within the Parking Area. No Owner or its Permittees shall take, cause, authorize, or permit any installation activity upon or use of its Lot that would unreasonably interfere with the rights herein granted.

8. Nature of Easements. The foreclosure of any mortgage covering all or a portion of a Lot or Lots shall in no way affect or diminish any easements granted herein, for all such easements shall remain in full force and effect for the benefit of the grantees described herein. The easements hereby created are not public easements, but are permanent, private easements for the use and benefit of the Owners, future Owners, occupants, mortgagees, and their respective Permittees, and fire, rescue and other emergency vehicles. The Parties expressly disclaim the creation of any rights in or for the benefit of the public generally. It is understood and agreed that the easements shall continue for so long as any Lot or portion thereof remains in existence.

9. Lien Rights. In the event any sum of money payable by one Party to the other pursuant to any provision of this Agreement is not paid when due and is not subject to a valid dispute, the Party seeking payment (the "Requesting Party") shall give the non-paying Party (the "Non-Paying Party") written notice of such failure to pay as required herein. In the event the unpaid undisputed amount is not paid in full to the Requesting Party within thirty (30) days after such notice is given, the Requesting Party shall have the right to record, in the Office of the Register of Deeds for Douglas County, Nebraska, a notice of lien, which shall set forth the then delinquent undisputed amount owed by the Non-Paying Party (including interest at an annual rate of eighteen percent (18%) per annum (the "Default Rate"), and a legal description of the Lot owned by the Non-Paying Party (the "Notice of Lien"). Any Non-Paying Party acknowledges that its Lot will be subject to a lien claim in favor of the Requesting Party in the event Non-Paying Party fails to pay any sums due under this Agreement. Upon recordation of such Notice of Lien, the then delinquent amount owing by the Non-Paying Party, together with interest thereon at the Default Rate, shall constitute a lien upon the parcel of such Non-Paying Party (the "Lien"), as described in the Notice of Lien. In the event the amount secured by such Lien is not paid in full within thirty (30) days after such Notice of Lien has been recorded, the Requesting Party may enforce payment of the amount due, or enforce the Lien against the parcel of the Non-Paying Party, by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies set forth below, the Requesting Party shall not prejudice or waive its right to exercise the other remedy or such additional remedies as may be available under applicable law): (i) bringing an action at law against the Non-Paying Party personally obligated to pay the unpaid sum of money; and/or (ii) foreclosing the Lien against the parcel of the Non-Paying Party in accordance with the then prevailing Nebraska law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency).

10. Self-Help Rights. If an Owner (the "Failing Party") fails to observe or perform any of its obligations or duties hereunder, then the Non-Failing Party may give the Failing Party written notice of such failure and Failing Party shall observe or perform the obligation or duty required within ten (10) days after receiving such notice; provided, however, that if such non-performed or non-observed obligation or duty is one which cannot be performed or observed within said ten (10) day period and thereafter the Failing Party diligently prosecutes such performance or observance until completion to the reasonable satisfaction of the Non-Failing Party, then Non-Failing Party shall not be entitled to exercise the remedy provided for in the following sentences. Should Failing Party fail to fulfill this obligation or duty within such period, then Non-Failing Party, through its authorized agents, shall have the right and power to enter onto the Failing Party's Lot and perform such obligation or duty without liability to any

person for damages for wrongful entry or trespass unless occasioned by the gross negligence or intentional wrongful acts of the Non-Failing Party or its agents. Failing Party shall be liable for its Allocated Share of the cost of such work and shall promptly reimburse Non-Failing Party for such costs if Non-Failing Party provides proof they have been paid. If Failing Party shall fail to either reimburse Non-Failing Party or pay the performer of said work within thirty (30) days after receipt from Non-Failing Party of a written statement describing the work performed, the cost thereof and providing documentation substantiating said costs, then Non-Failing Party may enforce payment of the amount due in accordance with Section 9 of this Agreement. Notwithstanding the foregoing, in the event of an emergency, Non-Failing Party may undertake any duties which are reasonably necessary to alleviate said emergency and to stabilize the situation and Failing Party shall reimburse Non-Failing Party for its Allocated Share of all reasonable sums so expended if Non-Failing Party provides proof they have been paid. Non-Failing Party shall use best efforts to give immediate notice of such emergent circumstances to Failing Party.

11. Effect of Agreement. Each Owner, its successors and assigns, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, easements, covenants, reservations, liens and charges, and the jurisdiction, rights and powers granted or reserved by this Agreement or to which the Lot is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person or entity having at any time any interest or estate in said property, and shall inure to the benefit of such Owners on like manner as though the provisions, terms and restrictions of this Agreement were received and stipulated at length in each and every deed of conveyance.

12. Waiver. No covenant, restriction, condition or provision of this Agreement shall be deemed to have been abrogated or waived by reason on any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

13. Savings Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Agreement herein contained, as the case may be, shall not render the remainder of the Agreement invalid, nor any other part therein contained.

14. Amendment; Modification. This Agreement may be amended by the written consent and mutual agreement of all the record Owners of the Lots subject hereto or their successors and assigns. Any such modification or amendment shall be effective when duly recorded in the Office of the Register of Deeds of Douglas County, Nebraska.

15. Estoppel. Either Party shall deliver to the other Party, within thirty (30) days after request therefore, a written statement, setting forth that, to the best of such Owner's knowledge, the requesting Party is not in default in the performance of any of its obligations under this Agreement or, if in default, setting forth the nature of such default, and such other matters as may be reasonably requested.

16. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of Nebraska.

[Signatures on following pages]

EXECUTED this 22 day of APRIL, 2014.

PARTY 1

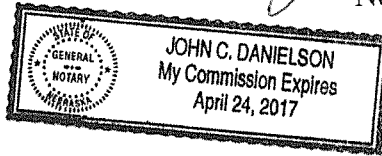
George W. Venteicher
George W. Venteicher

Frank H. Kulig
Frank H. Kulig

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 22 day of APRIL 2014, by George W. Venteicher, a Nebraska resident.

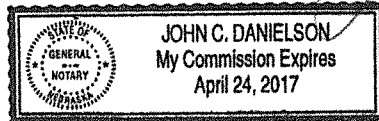
John C. Danielson
Notary Public



STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 22 day of APRIL 2014, by Frank H. Kulig, a Nebraska resident.

John C. Danielson
Notary Public

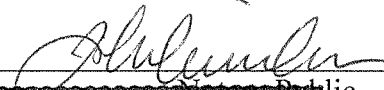


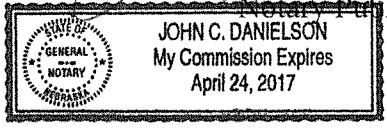
VENTEICHER


George W. Venteicher

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 22 day of APRIL 2014,
by George W. Venteicher, a Nebraska resident.


Notary Public



180th Plaza - 180th & Q (SWC) Site Plan

EXHIBIT A PARKING AREA

