

FILED SARPY CO. NE.

INSTRUMENT NUMBER

2006-36229

2006 OCT 23 A 11:46 8

Shirley J. Dowling

REGISTER OF DEEDS

COUNTER	<i>a</i>	C.E.	<i>LM</i>
VERIFY	<i>ah</i>	P.E.	<i>P</i>
PROOF	<i>SM</i>		
FEE \$	<i>23.00</i>		
CHECK #			
CHG	<i>ACC 23.00</i>	CASH	
REFUND		CREDIT	
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**PERMANENT STORM SEWER
EASEMENT AND MAINTENANCE AGREEMENT**

THIS PERMANENT STORM SEWER EASEMENT AND MAINTENANCE AGREEMENT is made as of this 10th day of May, 2006, (hereinafter referred to as the "Effective Date") by and between Giles Road No. 2, L.L.C., a Nebraska limited liability company (hereinafter referred to as the "Grantor").

RECITALS:

WHEREAS, Grantor is the lawful owner of Lots 1 and 2, Val Vista Replat Three, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska; and Lots 1 through 4, inclusive, Val Vista Replat Four, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska;

WHEREAS, the final plat of Val Vista Replat Three and Val Vista Replat Four Plat are recorded as Instrument Numbers 2006-19541 and 2006-36222, respectively in the Register of Deeds, Sarpy County, Nebraska (hereinafter referred to as the "Plat"), shows a certain storm sewer easement across Lots 1 and 2, Val Vista Replat Three, and Lots 1 through 3, Val Vista Replat Four for the benefit of the owners of Lots 1 and 2, Val Vista Replat Three, and Lots 1 through 4, inclusive, Val Vista Replat Four (hereinafter the "Benefited Lots");

WHEREAS, by virtue of the recording of this Reciprocal Permanent Storm Sewer Easement and Maintenance Agreement (the "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 portion of any said 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, each party, as grantor, desires to grant to the other party for the benefit of said other party and for the benefit of all future owners, occupants and mortgagees of the Lots or any part thereof, a storm sewer easement, under and through the Lots as shown on the Plat for the purpose of constructing and maintaining storm sewers for the transmission of storm waters over, under and through the Lots.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, including the mutual grants and covenants contained herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto do hereby GRANT, SELL and CONVEY unto each other and the future owners and mortgagees of the Lots, an easement for storm sewers to be constructed and maintained upon the area shown on the Plat and located upon the Lots for the purpose of carrying on, over and through storm waters; provided, however, that the rights herein granted to any

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person or entity, or anyone claiming under them, shall terminate and expire at such time as such person or entity ceases to be an owner or mortgagee of the Lots or any portion thereof, as the case may be, and such rights shall thereafter be held by the new owner or mortgagee, or anyone claiming under them.

It is further agreed as follows:

1. 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 Permittees, and fire, rescue and other emergency vehicles. The parties hereto 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 remains in existence.

2. Improvements and Costs and Expenses. Grantor shall be responsible for installing and constructing the storm sewers and related improvements at its sole cost and expense.

3. Maintenance of the Storm Sewer. The maintenance, repair, replacement and operation of the storm sewer and related improvements shall be the responsibility of the owners of the benefited lots. The cost of any maintenance, repair, replacement or operation expense shall be divided equally among the owners of the Lots. No maintenance, repair, replacement or operation expense shall be undertaken, unless in an emergency, without the consent of at least four (4) of the owners of the Benefited Lots.

4. Assessments.

(a) Each owner of a Lot (sometimes referred to hereinafter as the "Lot Owners") shall be responsible for its share of the costs and expenses for the repair, administration, operation, addition, alteration and replacement of the Improvements which shall be paid for by the Lot Owners through assessment ("Assessment") in accordance with this Agreement.

(b) Assessments may be levied at the time of required maintenance approved by at least four (4) of the owners of the Benefited Lots as provided in Paragraph 3 of this Agreement. A statement of expenses and the Lot owner's share shall be invoiced to the Lot Owner by the other Lot Owners within thirty (30) days of any maintenance, repair, replacement or operation expense.

(c) All Assessments shall be paid by each Lot Owner within thirty (30) days after the Assessment is made. All Assessments not paid within thirty (30) days thereafter, shall accrue interest at the highest rate provided for by law on the amount of the Assessment from the due date thereof, together with all expenses, including attorneys' fees. Any action to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing the lien nor shall any such action be construed as a waiver of the lien. All Assessments shall be the personal and individual debt of the Lot Owner thereof. No Lot Owner may exempt themselves from liability for this contribution towards the expenses by waiver of the use or enjoyment of any of the Improvements, or by abandonment of their Lot.

(d) All sums assessed against each Lot, but unpaid for the share of expenses chargeable to any Lot shall constitute a lien on such Lot superior to all other liens and encumbrances, except only for tax and special assessment liens on the Lot in favor of any governmental assessing entity and all sums unpaid on any first mortgage of record, including all unpaid obligatory sums as may be provided by such encumbrances. To evidence such lien, any two (2) Lot Owners of the Benefited Lots shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest, and the name of the Lot Owner and a description of the Lot. Such notice of lien shall be signed by the Declarant and shall be recorded in the Office of the Register of Deeds for Douglas County, Nebraska. Such lien shall attach and be effective from the due date of the Assessment until all sums, with interest thereon, shall have been fully paid.

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(e) Such lien may be enforced by the foreclosure of the defaulting owner's Lot by the Declarant in the manner of a deed of trust or mortgage on real property upon the recording of a notice of claim thereof. In any such proceedings, the owner of the Lot shall be required to pay the costs, expenses and attorney's fees incurred for filing the lien, and in the event of foreclosure, all additional costs, expenses and attorney's fees incurred.

(f) Any mortgagee holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Assessments with respect to such Lot, and upon such payment, such encumbrancer shall have a lien on such Lot for the amount paid of the same rank as the lien of its mortgage or encumbrance without the necessity of having to record a notice of claim of such lien. The Declarant will report to any mortgagee on a Lot any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same is due; provided, however, that a mortgagee shall have furnished to the Declarant notice of such encumbrance.

(g) The recorded lien may be released by recording a Release of Lien signed by at least four (4) owners of Benefitted Lots and shall be recorded in the Office of the Register of Deeds of Douglas County, Nebraska at the expense of the owner of such Lot.

(h) Notwithstanding any of the foregoing provisions, any first mortgagee who obtains title to a Lot pursuant to the remedies set forth in its mortgage or deed of trust shall take title to the Lot free and clear of all Assessments levied thereon prior to such transfer of title free and clear of all liens created as a result of such Assessments.

(i) The owner of a Lot may create junior mortgages or deeds of trust to the lien or other encumbrances of a first priority mortgage or deed of trust; provided, however, that any such junior mortgage, deed of trust, liens or other encumbrances, will always be subordinate to the prior and paramount lien of the Benefitted Owners for Assessments and all of the terms, conditions, covenants, restrictions, uses, limitations and obligations under this Agreement.

4. Effect of Covenants. Each owner of a Lot, its successors and assigns, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers granted or reserved by this Agreement or to which this Agreement 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 of estate in said property, and shall inure to the benefit of such Lot 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.

5. 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.

6. 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.

7. Amendment, Modification, Notices.

(a) This Agreement may only be amended by the written consent and agreement of the record owners of the Lots or their successors and assigns. Any such modification or amendment shall be effective when duly recorded in the office of the Register of Deeds in the county in which said property is situated.

(b) Wherever in this Agreement the consent or approval of an owner of a Lot is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner of a Lot under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

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

EXECUTED this 10th day of May, 2006.

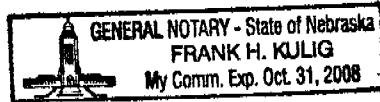
GILES ROAD NO. 2, L.L.C., a Nebraska limited liability company,

George W. Venteicher
George W. Venteicher, Managing Member

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 10th day of May, 2006 by George W. Venteicher, Managing Member on behalf of Giles Road No. 2, L.L.C., a Nebraska limited liability company.

[Seal]



Frank Kulig
Notary Public