



MISC 20050411E1



APR 13 2005 08:30 P 6

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
4/13/2005 08:30:39.64



2005041161

THIS PAGE INCLUDED FOR INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT

F
misc
FEE 30.50 FB 01-60000
6
1 BKP 18-15-11 ^{*AW*} C/O COMP _____
DEL _____ SCAN _____ FV _____

✓ 7085

DECLARATION OF COVENANT TO REIMBURSE,
GRANT OF LIEN AND AGREEMENT

THIS DECLARATION OF COVENANT TO REIMBURSE, GRANT OF LIEN AND AGREEMENT, is hereby made on the date hereinafter set forth by Kevin G. McArdle hereinafter referred to as "Declarant" and Janine McArdle, in her capacity as Declarant's spouse. Declarant's spouse is a party hereto in order to consent to all of the provisions herein and to encumber any spousal interest she may by law have in Declarant's Property with the covenant to reimburse and grant of lien in accordance with the terms herein.

WITNESSETH:

WHEREAS, Declarant is the owner of certain unplatted property in the County of Douglas, State of Nebraska, which is more particularly described on the attached Exhibit A, which is incorporated herein by this reference (hereafter "the Declarant's Property").

WHEREAS, the Declarant's Property abuts part of the west side of property that is to be developed by Dial Realty Development Co. (hereafter "Dial") into the Elk Ridge subdivision (hereafter Elk Ridge subdivision).

WHEREAS, it is desirable to relocate and modify certain natural gas facilities, including a natural gas transmission line, natural gas distribution line and a town border station (collectively the "gas facilities"), that are owned by Northern Natural Gas Company and/or Aquila, which are located on the Declarant's Property and Dial's Elk Ridge property, by constructing new natural gas facilities in the public right-of-way and abandoning the existing natural gas lines on the Declarant's Property after the completion of the construction of the new natural gas lines and facilities.

WHEREAS, Dial has a variety of alternatives with respect to relocating and modifying natural gas facilities with respect to its development of Elk Ridge subdivision and has approached Declarant with an alternative that benefits Declarant's Property.

WHEREAS, Declarant, Declarant's spouse and Dial have entered into an Agreement concurrently herewith relating to the modification and relocation of the gas facilities, which Agreement is incorporated herein by this reference (hereafter "the Agreement").

After recording, please return to:
Daniel D. Walsh
WALSH LAW, P.C.
13304 W. Center Rd., Ste. 222
OMAHA, NE 68144-3456

WHEREAS, pursuant to the Agreement, Declarant is willing to pay a specified share of the costs incurred by Dial and/or Sanitary and Improvement District No. 521 of Douglas County, Nebraska (hereafter SID # 521) (which is the Sanitary and Improvement District formed by Dial for purposes of development of the Elk Ridge subdivision), relating to the aforementioned modification and relocation of the gas facilities, and Declarant and Declarant's spouse are willing to encumber Declarant's Property with a covenant and lien in favor of Dial and SID # 521, which shall be a covenant and lien against the Declarant's Property that shall run with the Declarant's Property, in order to secure the Declarant's obligation to reimburse and pay to Dial and/or SID # 521, or such other person that may be legally entitled to receive such reimbursement, the sum of One Hundred Seventy-five Thousand Dollars (\$175,000.00), which the Declarant and Dial agree will constitute the entirety of Declarant's share of all of the costs relating to the modification and relocation of the aforementioned gas facilities, which payment is due upon the sale, transfer, platting, subdividing, or rezoning of any portion of the Declarant's Property or upon evidence of construction initiated by Declarant for Declarant's benefit on all or part of the Declarant's Property. However, the entire sum shall not become due upon the sale, conveyance transfer dedication, condemnation or construction activity upon a portion of Declarant's property that relates solely to a street improvement or street widening project, provided that said street project is unrelated to the development of the Declarant's Property, but Declarant is obligated to pay an amount equal to the net sale proceeds that become available to him through the sale of all or part of the Declarant's Property until such time as the entire \$175,000.00 has been repaid by Declarant, and Declarant also agrees that the entire unpaid balance of the \$175,000.00 becomes immediately due and payable upon the sale or conveyance of either Parcel #1 or Parcel #2 of the Declarant's Property or upon the development of, or construction initiated by Declarant for Declarant's benefit upon, all or part of the Declarant's Property, except for any of the aforementioned street improvement or widening projects. ..

NOW THEREFORE, Declarant and Declarant's spouse hereby declare that all of the Declarant's Property shall be held, sold and conveyed subject to the following covenants, restrictions, and conditions:

1. Declarant and Declarant's spouse hereby covenant, grant and agree that all of the Declarant's Property is hereby encumbered with a covenant and lien in favor of Dial and SID # 521, which shall be a covenant and lien against the Declarant's Property that shall run with the Declarant's Property, in order to secure the Declarant's obligation to reimburse and pay to Dial and/or SID #521, or such other person that may be legally entitled to receive such reimbursement, the sum of One Hundred Seventy-five Thousand Dollars (\$175,000.00), which shall be the Declarant's entire share of all of the costs of the modification and relocation of the gas facilities as described herein, except that such covenant shall be expressly contingent upon the release, termination or merger into fee by an assignment of the easement for natural gas pipeline recorded at Book 521, Page Number 107 of the Miscellaneous Records in the office of the Register of Deeds in Douglas County, Nebraska that is located on Declarant's Property (hereafter

"the Easement"). Provided that the Easement has been released, terminated or merged into the fee by an assignment of said easement to the Declarant or his successors or assigns, the payment hereunder shall be due and payable upon the sale, transfer, platting, subdividing, or rezoning of any portion of the Declarant's Property, or upon evidence of construction initiated by Declarant for Declarant's benefit on all or part of the Declarant's Property. However, the entire sum shall not become due upon the sale, transfer, condemnation, dedication, or construction activity relating to a street improvement or street widening project, provided that said street project is unrelated to the development of the Declarant's Property, but Declarant is obligated to pay an amount equal to the net sale proceeds that become available to him through the sale of all or part of the Declarant's Property until such time as the entire \$175,000.00 has been repaid by Declarant, and Declarant also agrees that the entire unpaid balance of the \$175,000.00 becomes immediately due and payable upon the sale or conveyance of either Parcel #1 or Parcel #2 of the Declarant's Property or upon the development of, or construction initiated by Declarant for Declarant's benefit upon, all or part of the Declarant's Property, except for any of the aforementioned street improvement or widening projects. This covenant shall run with the Declarant's Property and be binding on all parties having any right, title or interest in the Declarant's Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of SID # 521, its successors and assigns, and to such other person that may be legally entitled to receive such reimbursement. If said reimbursement is not paid within thirty (30) days after the due date, then it shall be deemed delinquent and shall bear interest at the rate of seven percent per annum, and the persons entitled thereto may bring an action at law against the Declarant or the then owner of the Declarant's Property personally obligated to pay the same, or may foreclose the lien that the Declarant and Declarant's spouse have hereby granted to SID # 521, in an action in equity, which action may be in the manner of a foreclosure of a mortgage against the Declarant's Property through proceedings in any court having jurisdiction of actions for the enforcement of such liens, and which may result in the sale of the Declarant's Property at a foreclosure sale.

2. Declarant and Declarant's spouse hereby further agree, declare and covenant that Declarant and Declarant's spouse shall accept the ownership and abandonment of all the natural gas pipes and lines that are currently located on the Declarant's Property, which shall occur after the new natural gas facilities have been constructed.
3. In the event that Northern Natural Gas Company fails or refuses to modify its natural gas facilities on the Declarant's Property by constructing new facilities in the public right-of-way and by abandoning the natural gas pipes that are currently located on the Declarant's property, then this covenant shall be terminated and deemed null and void, and neither party shall be obligated to the other party, and Declarant shall have no obligation to pay.

Declarant, for himself and for his successors and assigns, and Declarant's spouse, do hereby confirm and represent to Dial and to SID # 521, and their successors and assigns, that Declarant is well seized in fee of the Declarant's Property, and that Declarant has the right and authority to execute this document, and that Declarant and Declarant's spouse, and their successors and assigns shall warrant, defend and undertake any and all actions to facilitate the enforcement of the covenants set forth herein. These covenants shall run with the Declarant's Property and shall be binding on all parties having any right, title or interest in the Declarant's Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of Dial and SID # 521, its successors and assigns.

IN WITNESS WHEREOF, the undersigned, being the Declarant and Declarant's spouse herein, have hereunto set their hand this 31st day of March, 2005.

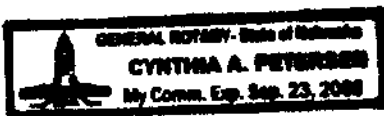
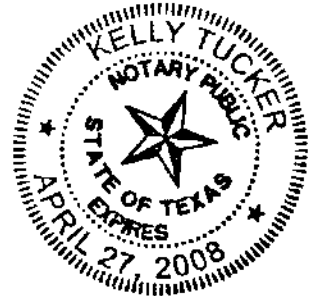
DECLARANT:

By: Kevin G. McArdle By: Janine McArdle
Kevin G. McArdle, Declarant Janine McArdle, his spouse

State of Nebraska)
County of Douglas) ss.

Before me, a Notary Public, in and for said county and state, on this 31st day of March, 2005, personally came Kevin G. McArdle, Declarant, and Janine McArdle, his spouse, known to me to be the identical persons who executed the above instrument and acknowledged the execution thereof to be their voluntary act and deed.

Cynthia A. Petersen Kelly Tucker
Notary Public



LEGAL DESCRIPTIONS FOR DECLARANT'S PROPERTY

PARCEL # 1:

Tax Lot 1 in the Northeast Quarter of the Northwest Quarter and the Northwest Quarter of the Northwest Quarter of Section 18, Township 15 North; Range 11 East of the 6th P.M., Douglas County, Nebraska, except those portions platted into Lots 4 and 5 on Binfield Street, NROHKLE, A SUBDIVISION, and that part dedicated to the State of Nebraska

PARCEL # 2:

That part of Tax Lot 2 in the NE1/4 NW1/4 and the NW1/4 NW1/4 of Section 18, T15N, R11E of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the N.E. corner of said NW1/4; thence S 00 Degrees 42'15" E (assumed bearing) on the east line of said NW1/4, 330.62 feet to the N.E. corner of said Tax Lot 2 and the point of beginning; thence continuing S 00 Degrees 42'15" E on the east line of said NW1/4, 450.00 feet; thence S 89 Degrees 12' 53" W, 1354.71 feet; thence N 15 Degrees 25'13" W, 49.73 feet; thence N 20 Degrees 54'07" W, 427.99 feet to the north line of said Tax Lot 2; thence N 89 Degrees 12'53" W on the north line of said Tax Lot 2, 1515.11 feet to the point of beginning.

EXHIBIT A